

Agriculture and Environment Appropriations Committee

Monday, April 17 2006

3:00 pm

306 House Office Building



Florida House of Representatives

Fiscal Council
Agriculture & Environment Appropriations Committee

Allan Bense
Speaker

Stan Mayfield
Chair

Agenda for
Date: April 17, 2006
Location: 306 House Office Building, Tallahassee, FL
Time: 3:00 PM

- I. Call to Order
- II. Roll Call
- III. HB 1347 CS by Williams—Land Management
- IV. HB 7075 by Agriculture Committee—Department of Agriculture and Consumer Services
- V. HB 1039 CS by Garcia—Miami-Dade County Lake Belt Area
- VI. HB 1459 by Poppell—Regulated Reptiles
- VII. HB 229 CS by Clarke—Exploration, Production, and Storage of Petroleum and Natural Gas
- VIII. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1347 CS

Land Management

SPONSOR(S): Williams

TIED BILLS:

IDEN./SIM. BILLS: SB 2102

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Environmental Regulation Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Perkins</u>	<u>Kliner</u>
2) <u>Agriculture & Environment Appropriations Committee</u>	<u></u>	<u>Dixon</u> <i>JSD</i>	<u>Dixon</u> <i>JSD</i>
3) <u>State Resources Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill, in part:

- Creates the "Babcock Ranch Preserve Act" and establishes the Babcock Ranch Preserve to protect and preserve the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the Babcock Ranch Preserve and to provide for the multiple use and sustained yield of the renewable surface resources within the Babcock Ranch Preserve.
- Authorizes the creation of a not-for-profit corporation known as "Babcock Ranch, Inc." which shall assume management of the Babcock Ranch Preserve with input from the Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services. The Babcock Ranch, Inc., shall manage the land resources including but not limited to the following:
 - Administration and operation of the Babcock Ranch Preserve as a working ranch
 - Preservation and development of the land and renewable surface resources of the Babcock Ranch Preserve
 - Interpretation of the Babcock Ranch Preserve and its history on behalf of the public
 - Management, public use, and occupancy of facilities and lands within the Babcock Ranch Preserve
 - Maintenance, rehabilitation, repair, and improvement within the Babcock Ranch Preserve
 - Develop programs and activities relating to the management of the preserve as a working ranch

Upon a determination by the Board of Trustees of the Internal Improvement Trust Fund, no later than 60 days before the termination of the preliminary management agreement, the bill stipulates that Babcock Ranch, Inc., shall assume all authority to manage the Babcock Ranch Preserve. The preliminary management agreement term is for a five-year period and provides for an automatic extension of an additional five-year period. The bill provides that upon the dissolution of Babcock Ranch, Inc., for any reason, the management responsibilities shall revert to the Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services.

- Provides that the Babcock Ranch, Inc., shall be governed by a nine-member governing board whose members will be appointed no later than 90 days after the initial acquisition of the Babcock Ranch by the state.
- Requires Babcock Ranch, Inc., to establish various business operation requirements relating to:
 - a) Finances
 - b) Reports
 - c) Legal
 - d) Development of comprehensive business plan

The fiscal impact on this bill is indeterminate.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 3/30/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill creates a not-for-profit corporation known as "Babcock Ranch, Inc.," to ultimately manage the Babcock Ranch Preserve. The bill provides for consulting duties by the Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services.

Safeguard Individual Liberty: The bill creates a not-for-profit corporation known as "Babcock Ranch, Inc.," to ultimately manage the Babcock Ranch Preserve. The bill preserves the working ranch currently in operation at the Babcock Ranch.

B. EFFECT OF PROPOSED CHANGES:

Babcock Ranch

The area known as the "Babcock Crescent B Ranch" (Babcock Ranch) covers an area of 143 square miles and is comprised of 81,499 acres in Charlotte County and 9,862 acres in Lee County. The Babcock Ranch is a Florida Forever Group A project which was added to the acquisition list in 2001. The Babcock Ranch is home to the Florida panther, Florida black bear and other threatened and endangered wildlife. The ranch includes large, well managed areas of pine and scrubby flatwoods along with a highly functional freshwater swamp system known as Telegraph Swamp. The acquisition of the Babcock Ranch would complete a massive natural land corridor from Lake Okeechobee to the Gulf of Mexico.

Currently, the Babcock Ranch includes tenant farms for watermelon and tomatoes on about 4,000 acres, 1,000 acres of sod farming, 2,000 acres of permitted mining activities, and 20,000 acres of improved pasture land. Public access to 6,000 acres covering six miles is provided through guided eco-tours by Babcock Wilderness Adventures, Inc. Hunting activities are authorized on 61,000 acres through 22 private annual hunting leases covering an average of 5,000 acres per lease. Prescribed burning activities are conducted on approximately 25,000 acres and 72,000 acres are in native vegetation and are grazed rotationally.

On November 22, 2005, the Board of Trustees of the Internal Improvement Trust Fund approved the Agreement for Sale and Purchase for the state to acquire approximately 74,000 acres of the Babcock Ranch for a total price of \$350 million. As part of the acquisition agreement, Babcock Ranch Management, LLC, has agreed to manage all land to be purchased by the State in accordance with the state's land management plan that will be developed after the initial acquisition in July 2006. The preliminary management agreement will preserve and sustain the quality of the property as conservation land, as a working ranch, and silviculture operation which shall include in part:

- Cattle ranching, timber management and harvesting, Florida native plant nursery, apiary (bee) operations, sod farm, or any form of agriculture in present use on the property
- Eco-tourism, natural resource based recreation such as hiking, hunting, and fishing
- Horticultural debris disposal business
- Tenant farming which is to be phased out over time

The preliminary management agreement provides that the manager of the ranch is entitled to all revenues from operations from the ranch. During the first five-year management period, the manager

must reinvest not less than 50 percent of all net revenues, from which employee salaries and benefits may not be deducted, in the management, maintenance and improvement of the property. If the preliminary management agreement is extended for a second five-year period, the reinvestment percentage increases by 10 percent each year until it reaches 90 percent. This preliminary management agreement will be for a five-year period and provides for an automatic extension of an additional five year period.

Due to the complexity of balancing a working ranch, outdoor recreation and wildlife management, the state is proposing that a not-for-profit agency be established to manage the ranch. Pending approval and creation by the Legislature, the non-profit agency would have a board of directors with a diverse range of expertise in land management, ranch operations, wildlife management and outdoor recreation. Following the fulfillment of Babcock Ranch Management, LLC, obligations, the not-for-profit agency would assume full responsibility for managing the land and ranch.

Effect of Proposed Change

The bill creates section 259.1053, F.S., to be cited as the "Babcock Ranch Preserve Act." The bill provides that the Babcock Ranch must be protected for current and future generations by continued operation as a working ranch under a unique management regime that protects the land and resource values of the property and surrounding ecosystems while allowing the ranch to become financially self-sustaining.

Babcock Ranch Preserve

The bill provides definitions relating to the act and upon the acquisition of the Babcock Ranch by the Board of Trustees of the Internal Improvement Trust Fund, there is established the "Babcock Ranch Preserve." The Babcock Ranch acquisition is a conservation acquisition under the Florida Forever program with a goal of sustaining the ecological and economic integrity of the property being acquired while allowing the business of the ranch to operate and prosper. The Babcock Ranch Preserve is established to protect and preserve the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the preserve and to provide for the multiple use and sustained yield of the renewable surface resources within the preserve. The bill provides that except for the enumerated duties of the Commissioner of Agriculture and the enumerated duties of the Florida Fish and Wildlife Conservation Commission provided in s. 9, Art. IV, of the State Constitution, the Babcock Ranch Preserve shall be managed by Babcock Ranch, Inc.

Babcock Ranch, Inc.

The bill states that the management regime will best be provided through the creation of a nonprofit public-private entity that is capable of developing and implementing environmentally sensitive, cost effective, and creative methods to manage and operate a working ranch. The bill creates a not-for-profit corporation known as "Babcock Ranch, Inc.," that will be registered, incorporated, organized, and operated in this state and not be a unit or entity of state government. Babcock Ranch, Inc., is organized on a nonstock basis. The purpose of Babcock Ranch, Inc., is to provide the following:

- Management and administrative services for the Babcock Ranch Preserve
- Establish and implement management policies
- Cooperate with state agencies to further the purposes for which the Babcock Ranch Preserve was created
- Establish the administrative and accounting procedures for the operation of the Babcock Ranch, Inc.

The bill provides that the Babcock Ranch, Inc., is subject to the provisions of chapter 119, F.S., relating to public records and those provisions of chapter 286, F.S., relating to public meetings and records for any meetings of Babcock Ranch, Inc. The dissolution of Babcock Ranch, Inc., may only occur by an act of the Legislature.

The bill authorizes Babcock Ranch, Inc., the ability to appoint and utilize advisory committees to assist in the particular function for which the committee was established. The bill provides that Babcock Ranch, Inc., and its officers and employees shall participate in the management of the Babcock Ranch Preserve in an "advisory capacity only" until the management agreement executed by Babcock Ranch Management, LLC, and the Board of Trustees of the Internal Improvement Trust Fund, Florida Fish and Wildlife Conservation Commission, and Department of Agriculture and Consumer Services, and Lee County is terminated or expires. The bill requires on or before the date on which title to the Babcock Ranch is vested in the state, Babcock Ranch Management, LLC, is to provide Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services their management plan and business plan in place for the operation of the ranch as of November 22, 2005, the date on which the Board of Trustees of the Internal Improvement Trust Fund approved the acquisition.

Upon a determination by the Board of Trustees of the Internal Improvement Trust Fund, no later than 60 days before the termination of the preliminary management agreement, the bill stipulates that Babcock Ranch, Inc., shall assume all authority to manage the Babcock Ranch Preserve as a working ranch.

The bill provides that Babcock Ranch Inc. shall assume management of the Babcock Ranch Preserve with input from Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services. The Babcock Ranch, Inc., shall manage the land resources including but not limited to the following:

- Administration and operation of the Babcock Ranch Preserve as a working ranch
- Preservation and development of the land and renewable surface resources of the Babcock Ranch Preserve
- Interpretation of the Babcock Ranch Preserve and its history on behalf of the public
- Management, public use, and occupancy of facilities and lands within the Babcock Ranch Preserve
- Maintenance, rehabilitation, repair, and improvement within the Babcock Ranch Preserve
- Develop programs and activities relating to the management of the preserve as a working ranch

The bill requires Babcock Ranch, Inc., to develop reasonable procedures for entering into lease agreements and other agreements for the use and occupancy of the facilities of the Babcock Ranch Preserve and their negotiation thereof. State laws and rules governing the procurement of commodities and services by state agencies shall apply to Babcock Ranch, Inc., The bill requires the Babcock Ranch, Inc., to provide equal employment opportunities for all persons regardless of race, color, religion, gender, national origin, age, handicap, or marital status.

The bill provides that Babcock Ranch, Inc., may not:

- Purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real property, or any interest therein, wherever situated.
- Sell, convey, mortgage, pledge, lease, exchange, transfer, or dispose of any real property.
- Purchase, take, receive, subscribe for, or otherwise dispose of, or otherwise use and deal in and with, shares and other interests in other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or any governmental entity.
- Lend money for its purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds lent or invested.
- Merge with other corporations or other business entities.
- Enter into any contract, lease, or other agreement related to the use of ground or surface waters on or through property without the consent of the Board of Trustees of the Internal Improvement

Trust Fund, and permits that may be required by the Department of Environmental Protection or appropriate water management district.

- Grant any easements. Any easements granted within the Babcock Ranch Preserve must be executed by the Board of Trustees of the Internal Improvement Trust Fund. Any easements granted within the Babcock Ranch Preserve titled in the name of a local government must be granted by the governing body of that local government.
- Enter into any contract, lease, or other agreement related to the use and occupancy of the Babcock Ranch Preserve for a period of greater than 10 years.

The bill provides that nothing in the act is construed to interfere with or prevent the ability of Babcock Ranch, Inc., to implement agricultural practices authorized by agricultural land use designations established in the local comprehensive plans of either Charlotte County or Lee County as those plans apply to the Babcock Ranch Preserve. The Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services are directed to establish a range of resource protection values for the Babcock Ranch Preserve, and the Babcock Ranch, Inc., shall establish operational parameters to conduct the business of the ranch within the range of values. Further, the Babcock Ranch, Inc., shall establish a range of operational values to conduct the business of the ranch, and the Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services providing ground support to the ranch outside of each agency's jurisdictional responsibilities shall establish management parameters within that range of values.

The bill authorizes Babcock Ranch, Inc., to assess independent reasonable fees for admission to utilize the Babcock Ranch Preserve to offset the costs of operating the Babcock Ranch Preserve as a working ranch.

The bill provides that upon the dissolution of Babcock Ranch, Inc., for any reason, the management responsibilities shall revert to the Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services unless otherwise provided by the Legislature.

Board of Directors

The bill provides that the Babcock Ranch, Inc., shall be governed by a nine-member governing board whose members will be appointed no later than 90 days after the initial acquisition of the Babcock Ranch by the state. The table below illustrates the composition of the board of directors:

Babcock Board of Directors Member Appointment	Qualification Criteria	Term Limits
Board of Trustees of the Internal Improvement Trust Fund (Four members)	<ul style="list-style-type: none"> • No appointee shall be an employee of any governmental entity. • One appointee must have expertise in domestic livestock management, production, and marketing, including range management and livestock business management • One appointee must have expertise in the management of game and nongame wildlife fish populations, including hunting, fishing, and other recreational activities • One appointee must have expertise in the sustainable management of forest lands for commodity purposes • One appointee must have expertise in financial management, budget and program analysis, and small business operations 	<ul style="list-style-type: none"> • Four initial members (4-yrs.)
Executive Director, Fish and Wildlife Conservation Commission (One member)	One member who has expertise in hunting, fishing, nongame species management or wildlife habitat management, restoration, and conservation.	One initial member (2 -yrs.)
Commissioner of Agriculture	One member with expertise in agricultural operations or forestry management	One initial member (2 -yrs.)

Babcock Florida Company (One member)	One member who has expertise in the activities and management of the Babcock Ranch as of the date of acquisition by the state. The member shall serve only until the termination of the preliminary management agreement. Upon termination of the preliminary management agreement, the person serving as the head of the property owner's association, if any, required to be created under the acquisition agreement shall serve as a member.	One initial member (2 -yrs.)
Charlotte County Board of County Commissioners (One member)	One member who shall be a resident of Charlotte County and who shall be active in an organization concerned with the activities of the ranch.	One initial member (2 -yrs.)
Lee County Board of County Commissioners (One member)	One member who shall be a resident of Lee County and who shall have expertise in land conservation and management. This appointee shall serve as a member as long as the county participates in the state management plan.	One initial member (2 -yrs.)
Note Relating To Term Limits: Each member appointed after the initial appointments be appointed to a 4-year term. Any vacancy among the trustees shall be filled in the same manner as the original appointment and any trustee appointed to fill a vacancy shall be appointed for the remainder of that term. No trustee may serve more than 8 years in consecutive terms.		
Meeting Requirements: At least three times per year at the call of the chair in Charlotte or Lee County in sessions open to the public.		
Chair and Vice Chair Election and Duties: Members shall annually elect a chair and vice chair from among their membership and may by a vote of five of the nine members, remove a member from the position of chair or vice chair prior to the expiration of the position. The chair shall ensure that records are kept of the proceedings of the board and is the custodian of certain official documents. Officers and employees of Babcock Ranch, Inc. are not employees of the state but are private employees. At the request of the trustee's, the state may provide state employees for the purpose of assist the trustees to implement the requirements of this bill. Any state employee assisting for more than 30 days shall be provided on a reimbursable basis. Reimbursement to the Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services shall be made from the Babcock Ranch, Inc. operating fund and not from any funds appropriated by the Legislature.		
Board Member Removal: Each member is accountable for the proper performance of the duties of office, and each member owes a fiduciary duty to the people of the state to ensure funds are disbursed and used as prescribed by law and contract. Any official appointing member may remove that member pursuant to certain criteria in the bill.		
Board Member Compensation: Members serve without compensation, but are entitled to receive per diem and travel expenses as provided by section. 112.061, F.S., while in the performance of their duties.		
Board Member Powers and Duties: The board of directors shall adopt articles of incorporation and bylaws necessary to govern its activities which must be approved by the Board of Trustees of the Internal Improvement Trust Fund prior to filing with the Department of State. The board of directors shall review and approve any management plan for the management of lands in the preserve prior to submission of that plan to the Board of Trustees of the Internal Improvement Trust Fund for approval and implementation. The board of directors will have all necessary and proper powers for the exercise of the authorities vested in Babcock Ranch, Inc., including, but not limited to, the power to solicit and accept donations of funds, property, supplies, or services from individuals, foundations, corporations, and other public or private entities. All funds received by Babcock Ranch, Inc., shall be deposited into an authorized operating fund unless otherwise directed by the Legislature. The board of directors may with the written approval of the Fish and Wildlife Conservation Commission and in consultation with the Department of Agriculture and Consumer Services, designate hunting, fishing, and trapping zones and establish additional periods when hunting, fishing, or trapping are not permitted for reasons of public safety, administration, and the protection and enhancement of nongame habitat and nongame species.		

The bill states that the Board Member may not:

- Be an officer, a director, or a shareholder in any entity that contracts with or receives funds from the Babcock Ranch, Inc., or its subsidiaries with the exception of the Babcock Florida Company appointee.
- Vote in any official capacity upon any measure that would inure to their private gain or loss; that would inure to the special private gain or loss of any principal by who the member is retained or to the parent organization or subsidiary of a principal by which the member is retained; or that the member would inure to the special private gain or loss of a relative or business associate of the member. Prior to any vote being taken, the member shall publicly state the nature of the member's interest in the matter from which the member is abstaining from voting and no later than 15 days after the vote occurs, disclose the nature of the member's interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting.
- Vote by proxy.
- Increase the number of its members.

Babcock Ranch, Inc., Financial Matters

The bill provides for the board of directors to establish and manage an operating fund, with a cash balance reserve that is equal to not more than 25 percent of its annual operating expenses, for the unique cash-flow needs associated with facilitating the fiscal management of Babcock Ranch, Inc. The bill stipulates that upon dissolution of Babcock Ranch, Inc., any remaining cash balances of funds shall revert back to the General Revenue Fund or to other state funds consistent with any appropriated funding.

The bill requires the board of directors to prepare an annual budget with the goal of achieving a financially self-sustaining operation within 15 full fiscal years after the initial acquisition of the Babcock Ranch by the state. The Department of Agriculture and Consumer Services is directed to provide assistance relating to the annual budget request for appropriations and may not deny a request or refuse to include in its annual legislative budget submission a request for appropriations from Babcock Ranch, Inc.

The bill stipulates that all moneys received from donations or from the management of the Babcock Ranch Preserve shall be retained by Babcock Ranch, Inc., in the operating fund and shall be available for the various operational expenses. Moneys received by Babcock Ranch, Inc., from the management of the Babcock Ranch Preserve are not subject to distribution to the state unless stipulated otherwise in this bill. The bill requires Babcock Ranch, Inc., to optimize the generation of income based on existing market conditions to the extent activities do not unreasonably diminish the long-term environmental, agricultural, scenic, and natural values of the Babcock Ranch Preserve, or the multiple-use and sustained-yield capability of the land.

Babcock Ranch, Inc. Reporting Requirements

The bill requires the board of directors to provide for an annual financial audit by an independent certified public accountant. The audit report is required to be submitted no later than three months after the end of the fiscal year to the Auditor General, the President of the Senate, the Speaker of the House of Representatives, and the appropriate substantive and fiscal committees of the Legislature. The bill authorizes certain other governmental entities to receive from the Babcock Ranch, Inc. or from the independent auditor any records relative to the operation of Babcock Ranch, Inc.

The bill requires by January 15 of each year, Babcock Ranch, Inc., to submit a comprehensive and detailed report of its operations, activities, and accomplishments for the prior year along with goals for that current year to the Board of Trustees of the Internal Improvement Trust Fund, the President of the Senate, the Speaker of the House of Representatives, the Department of Agriculture and Consumer Services, and the Florida Fish and Wildlife Conservation Commission.

Babcock Ranch, Inc. Legal and Insurance Related Matters

The bill requires all parties in contract and that hold a lease with Babcock Ranch, Inc. to procure insurance of an amount reasonable or customary to insure against any loss in connection with such properties or with activities authorized in such leases or contracts.

The bill grants Babcock Ranch, Inc., the exclusive right to utilize its corporate name and any seal, emblem, or insignia adopted by the board of directors along with providing certain prohibitions of such use.

Development of Comprehensive Business Plan for Babcock Preserve

The bill requires Babcock Ranch, Inc., not less than two years before it assumes management responsibilities for Babcock Ranch Preserve, to seek input from the Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services in order to develop a comprehensive business plan for the Babcock Preserve. The comprehensive business plan must provide for the following:

- Management and operation as a working ranch

- Protection and preservation of the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the Babcock Ranch Preserve.
- Promotion of high-quality hunting experiences for the public, with emphasis on deer, turkey, and other game species.
- Multiple use and sustained yield of renewable surface resources within the Babcock Ranch preserve.
- Public use of and access to the Babcock Ranch Preserve.
- Renewable resource use and management alternatives that benefit local communities and enhance the coordination of management objectives with those on surrounding lands. The use of renewable resources and management alternatives should provide a cost savings to Babcock Ranch, Inc.

The bill provides that any final decision to adopt or amend the comprehensive business plan or any activity related to the management of the land shall be made in sessions that are open to the public for comment.

The bill provides that the comprehensive business plan for the management and operation of the Babcock Ranch Preserve as a working ranch and amendments to the business plan may only be developed with input from the Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services and may only be implemented by Babcock Ranch, Inc., upon the expiration of the preliminary management agreement with Babcock Ranch Management, LLC.

C. SECTION DIRECTORY:

Section 1. Creates section 259.1053, F.S., relating to the management of the Babcock Ranch Preserve.

Section 2. Provides the act will take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: The overall fiscal impact of this bill is indeterminate. The Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services estimate interim land management funding to be \$1.9 million while recurring funding needs have not been calculated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides that the Babcock Ranch must be protected for current and future generations by continued operation as a working ranch under a unique management regime that protects the land and

resource values of the property and surrounding ecosystems while allowing the ranch to become financially self-sustaining.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None.

B. RULE-MAKING AUTHORITY:

No additional rule making authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Environmental Regulation Committee favorable adopted a "Strike All" amendment to HB 1347. The analysis has been revised to reflect this amendment.

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CHAMBER ACTION

The Environmental Regulation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to land management; creating s. 259.1053, F.S.; creating the Babcock Ranch Preserve Act; providing a short title; providing definitions; creating Babcock Ranch, Inc., a not-for-profit corporation to be incorporated in the state; providing that the corporation shall act as an instrumentality of the state for purposes of sovereign immunity under s. 768.28, F.S.; providing that the corporation shall not be an agency under s. 20.03, F.S.; providing that the corporation is subject to the provisions of chs. 119 and 286, F.S.; requiring public records and meetings; providing for the corporation to be governed by the Babcock board of directors; providing for the appointment of board members and terms of office; prohibiting any board member from voting on any measure that constitutes a conflict of interest; providing for the board members to serve without compensation, but to receive per diem and travel expenses; authorizing state agencies to provide state employees for purposes of

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24 implementing the Babcock Ranch Preserve; providing certain
25 powers and duties of the corporation; providing
26 limitations on the powers and duties of the corporation;
27 providing that the corporation and its subsidiaries must
28 provide equal employment opportunities; providing for the
29 corporation to establish and manage an operating fund;
30 requiring an annual financial audit of the accounts and
31 records of the corporation; requiring annual reports by
32 the corporation to the Board of Trustees of the Internal
33 Improvement Trust Fund, the Legislature, the Department of
34 Agriculture and Consumer Services, and the Fish and
35 Wildlife Conservation Commission; requiring that the
36 corporation prepare an annual budget; specifying a goal of
37 self-sustaining operation within a certain period;
38 providing for the corporation to retain donations and
39 other moneys; requiring that the corporation adopt
40 articles of incorporation and bylaws subject to the
41 approval of the Board of Trustees of the Internal
42 Improvement Trust Fund; authorizing the corporation to
43 appoint advisory committees; providing requirements for a
44 comprehensive business plan; specifying the procedures by
45 which the corporation shall assume the management and
46 operation of the Babcock Ranch Preserve; prohibiting the
47 corporation from taking certain actions without the
48 consent of the Board of Trustees of the Internal
49 Improvement Trust Fund; requiring that the corporation be
50 subject to certain state laws and rules governing the
51 procurement of commodities and services; authorizing the

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corporation to assess fees; providing for management of the Babcock Ranch Preserve until expiration of a current management agreement; providing for reversion of the management and operation responsibilities to certain agencies upon the dissolution of the corporation; providing that the corporation may be dissolved only by an act of the Legislature; providing for reversion of funds upon the dissolution of the corporation; providing a contingent effective date.

WHEREAS, the Babcock Ranch comprises the largest private undeveloped single-ownership tract of land in Charlotte County and contains historical evidence in the form of old logging camps and other artifacts that indicate the importance of this land for domesticated livestock production, timber supply, and other bona fide agricultural uses, and

WHEREAS, the careful husbandry of the Babcock Ranch, including selective timbering, limited grazing and hunting, and the use of prescribed burning, has preserved a mix of healthy range and timberland with significant species diversity and provides a model for sustainable land development and use, and

WHEREAS, the Babcock Ranch must be protected for current and future generations by continued operation as a working ranch under a unique management regime that protects the land and resource values of the property and the surrounding ecosystem while allowing and providing for the ranch to become financially self-sustaining, and

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79 WHEREAS, it is in the public's best interest that the
80 management regime for the Babcock Ranch include the development
81 of an operational program for appropriate preservation and
82 development of the ranch's land and resources, and

83 WHEREAS, the public's interest will be served by the
84 creation of a not-for-profit corporation to develop and
85 implement environmentally sensitive, cost-effective, and
86 creative methods to manage and operate a working ranch, NOW,
87 THEREFORE,

88
89 Be It Enacted by the Legislature of the State of Florida:

90
91 Section 1. Section 259.1053, Florida Statutes, is created
92 to read:

93 259.1053 Babcock Ranch Preserve; Babcock Ranch, Inc.;
94 creation; membership; organization; meetings.--

95 (1) SHORT TITLE.--This section may be cited as the
96 "Babcock Ranch Preserve Act."

97 (2) DEFINITIONS.--As used in this section, the term:

98 (a) "Babcock Ranch Preserve" and "preserve" mean the lands
99 and facilities acquired in the purchase of the Babcock Crescent
100 B Ranch, as provided in s. 259.1052.

101 (b) "Babcock Ranch, Inc." and "corporation" mean the not-
102 for-profit corporation created under this section to operate and
103 manage the Babcock Ranch Preserve as a working ranch.

104 (c) "Board of directors" means the governing board of the
105 not-for-profit corporation created under this section.

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(d) "Commission" means the Fish and Wildlife Conservation Commission.

(e) "Commissioner" means the Commissioner of Agriculture.

(f) "Department" means the Department of Agriculture and Consumer Services.

(g) "Executive director" means the executive director of the Fish and Wildlife Conservation Commission.

(h) "Financially self-sustaining" means management and operation expenditures not more than the revenues collected from fees and other receipts for resource use and development and from interest and invested funds.

(i) "Management and operating expenditures" means expenses of the corporation, including, but not limited to, salaries and benefits of officers and staff, administrative and operating expenses, costs for improvements to and maintenance of lands and facilities of the Babcock Ranch Preserve, and other similar expenses. Such expenditures shall be made from revenues generated from the operation of the ranch and not from funds appropriated by the Legislature except as provided in this section.

(j) "Member" means a person appointed to the board of directors of the not-for-profit corporation created under this section.

(k) "Multiple use" means the management of all of the renewable surface resources of the Babcock Ranch Preserve to best meet the needs of the public, including the use of the land for some or all of the renewable surface resources or related services over areas large enough to allow for periodic

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adjustments in use to conform to the changing needs and
conditions of the preserve while recognizing that a portion of
the land will be used for some of the renewable surface
resources available on that land. The goal of multiple use is
the harmonious and coordinated management of the renewable
surface resources without impairing the productivity of the land
and considering the relative value of the renewable surface
resources, and not necessarily a combination of uses to provide
the greatest monetary return or the greatest unit output.

(1) "Sustained yield of the renewable surface resources"
means the achievement and maintenance of a high level of annual
or regular periodic output of the various renewable surface
resources of the preserve without impairing the productivity of
the land.

(3) CREATION OF BABCOCK RANCH PRESERVE.--

(a) The acquisition of the Babcock Crescent B Ranch by the
Board of Trustees of the Internal Improvement Trust Fund is a
conservation acquisition under the Florida Forever program
created under s. 259.105, with a goal of sustaining the
ecological and economic integrity of the property being acquired
while allowing the business of the ranch to operate and prosper.

(b) Upon the date of acquisition of the Babcock Crescent B
Ranch, there is created the Babcock Ranch Preserve, which shall
be managed in accordance with the purposes and requirements of
this section.

(c) The preserve is established to protect and preserve
the environmental, agricultural, scientific, scenic, geologic,
watershed, fish, wildlife, historic, cultural, and recreational

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values of the preserve, and to provide for the multiple use and
sustained yield of the renewable surface resources within the
preserve consistent with this section.

(d) Babcock Ranch, Inc., and its officers and employees
shall participate in the management of the Babcock Ranch
Preserve in an advisory capacity only until the management
agreement referenced in paragraph (10)(a) is terminated or
expires.

(e) Nothing in this section shall preclude Babcock Ranch,
Inc., prior to assuming management and operation of the preserve
and thereafter, from allowing the use of common varieties of
mineral materials such as sand, stone, and gravel for
construction and maintenance of roads and facilities within the
preserve.

(f) Nothing in this section shall be construed as
affecting the constitutional responsibilities of the commission
in the exercise of its regulatory and executive power with
respect to wild animal life and freshwater aquatic life,
including the regulation of hunting, fishing, and trapping
within the preserve.

(g) Nothing in this section shall be construed to
interfere with or prevent the ability of Babcock Ranch, Inc., to
implement agricultural practices authorized by the agricultural
land use designations established in the local comprehensive
plans of either Charlotte County or Lee County as those plans
apply to the Babcock Ranch Preserve.

(h) To clarify the responsibilities of the lead managing
agencies and the not-for-profit corporation created under this

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190 section, the lead managing agencies are directed to establish a
191 range of resource protection values for the Babcock Ranch
192 Preserve, and the corporation shall establish operational
193 parameters to conduct the business of the ranch within the range
194 of values. The corporation shall establish a range of
195 operational values to conduct the business of the ranch, and the
196 lead managing agencies providing ground support to the ranch
197 outside of each agency's jurisdictional responsibilities shall
198 establish management parameters within that range of values.

199 (i) Nothing in this section shall preclude the maintenance
200 and use of roads and trails or the relocation of roads in
201 existence on the effective date of this section, or the
202 construction, maintenance, and use of new trails, or any
203 motorized access necessary for the administration of the land
204 contained within the preserve, including motorized access
205 necessary for emergencies involving the health or safety of
206 persons within the preserve.

207 (4) CREATION OF BABCOCK RANCH, INCORPORATED.--

208 (a) There is created a not-for-profit corporation, to be
209 known as Babcock Ranch, Inc., which shall be registered,
210 incorporated, organized, and operated in compliance with the
211 provisions of chapter 617, and which shall not be a unit or
212 entity of state government. For purposes of sovereign immunity,
213 the corporation shall be a corporation primarily acting as an
214 instrumentality of the state but otherwise shall not be an
215 agency within the meaning of s. 20.03(11) or a unit or entity of
216 state government.

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(b) The corporation is organized on a nonstock basis and shall operate in a manner consistent with its public purpose and in the best interest of the state.

(c) Meetings and records of the corporation, its directors, advisory committees, or similar groups created by the corporation, including any not-for-profit subsidiaries, are subject to the public records provisions of chapter 119 and the public meetings and records provisions of s. 286.011.

(5) APPLICABILITY OF SECTION.--In any conflict between a provision of this section and a provision of chapter 617, the provisions of this section shall prevail.

(6) PURPOSE.--The purpose of Babcock Ranch, Inc., is to provide management and administrative services for the preserve, to establish and implement management policies that will achieve the purposes and requirements of this section, to cooperate with state agencies to further the purposes of the preserve, and to establish the administrative and accounting procedures for the operation of the corporation.

(7) BOARD; MEMBERSHIP; REMOVAL; LIABILITY.--The corporation shall be governed by a nine-member board of directors who shall be appointed by the Board of Trustees of the Internal Improvement Trust Fund; the executive director of the commission; the commissioner; the Babcock Florida Company, a corporation registered to do business in the state, or its successors or assigns; the Charlotte County Board of County Commissioners; and the Lee County Board of County Commissioners in the following manner:

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244 (a)1. The Board of Trustees of the Internal Improvement
245 Trust Fund shall appoint four members. No appointee shall be an
246 employee of any governmental entity. One appointee shall have
247 expertise in domesticated livestock management, production, and
248 marketing, including range management and livestock business
249 management. One appointee shall have expertise in the management
250 of game and nongame wildlife and fish populations, including
251 hunting, fishing, and other recreational activities. One
252 appointee shall have expertise in the sustainable management of
253 forest lands for commodity purposes. One appointee shall have
254 expertise in financial management, budget and program analysis,
255 and small business operations.

256 2. The executive director shall appoint one member with
257 expertise in hunting; fishing; nongame species management; or
258 wildlife habitat management, restoration, and conservation.

259 3. The commissioner shall appoint one member with
260 expertise in agricultural operations or forestry management.

261 4. The Babcock Florida Company, its successors or assigns,
262 shall appoint one member with expertise in the activities and
263 management of the Babcock Ranch on the date of acquisition of
264 the ranch by the state as provided under s. 259.1052. This
265 appointee shall serve on the board of directors only until the
266 termination of or expiration of the management agreement
267 attached as Exhibit "E" to that certain Agreement for Sale and
268 Purchase approved by the Board of Trustees of the Internal
269 Improvement Trust Fund on November 22, 2005, and by Lee County,
270 a political subdivision of the state, on November 20, 2005. Upon
271 termination of or expiration of the management agreement, the

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person serving as the head of the property owners' association,
if any, required to be created under the agreement for sale and
purchase shall serve as a member of the Board of Directors of
Babcock Ranch, Inc.

5. The Charlotte County Board of County Commissioners
shall appoint one member who shall be a resident of the county
and who shall be active in an organization concerned with the
activities of the ranch.

6. The Lee County Board of County Commissioners shall
appoint one member who shall be a resident of the county and who
shall have experience in land conservation and management. This
appointee, or a successor appointee, shall serve as a member of
the board of directors so long as the county participates in the
state land management plan.

(b) All members of the board of directors shall be
appointed no later 90 days following the initial acquisition of
the Babcock Ranch by the state, and

1. Four members initially appointed by the Board of
Trustees of the Internal Improvement Trust Fund shall each serve
a 4-year term.

2. The remaining initial five appointees shall each serve
a 2-year term.

3. Each member appointed thereafter shall serve a 4-year
term.

4. A vacancy shall be filled in the same manner in which
the original appointment was made, and a member appointed to
fill a vacancy shall serve for the remainder of that term.

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299 5. No member may serve more than 8 years in consecutive
300 terms.

301 (c) With the exception of the Babcock Florida Company
302 appointee, no member may be an officer, director, or shareholder
303 in any entity that contracts with or receives funds from the
304 corporation or its subsidiaries.

305 (d) No member shall vote in an official capacity upon any
306 measure that would inure to his or her special private gain or
307 loss, that he or she knows would inure to the special private
308 gain or loss of any principal by whom he or she is retained or
309 to the parent organization or subsidiary of a principal by which
310 he or she is retained, or that he or she knows would inure to
311 the special private gain or loss of a relative or business
312 associate of the member. Such member shall, prior to the vote
313 being taken, publicly state the nature of his or her interest in
314 the matter from which he or she is abstaining from voting and,
315 no later than 15 days following the date the vote occurs, shall
316 disclose the nature of his or her interest as a public record in
317 a memorandum filed with the person responsible for recording the
318 minutes of the meeting, who shall incorporate the memorandum in
319 the minutes of the meeting.

320 (e) Each member of the board of directors is accountable
321 for the proper performance of the duties of office, and each
322 member owes a fiduciary duty to the people of the state to
323 ensure that funds provided in furtherance of this section are
324 disbursed and used as prescribed by law and contract. Any
325 official appointing a member may remove that member for
326 malfeasance, misfeasance, neglect of duty, incompetence,

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permanent inability to perform official duties, unexcused
absence from three consecutive meetings of the board, arrest or
indictment for a crime that is a felony or misdemeanor involving
theft or a crime of dishonesty, or pleading nolo contendere to,
or being found guilty of, any crime.

(f) Each member of the board of directors shall serve
without compensation, but shall receive travel and per diem
expenses as provided in s. 112.061 while in the performance of
his or her duties.

(8) ORGANIZATION; MEETINGS.--

(a)1. The board of directors shall annually elect a
chairperson and a vice chairperson from among the board's
members. The members may, by a vote of five of the nine board
members, remove a member from the position of chairperson or
vice chairperson prior to the expiration of his or her term as
chairperson or vice chairperson. His or her successor shall be
elected to serve for the balance of the removed chairperson's or
vice chairperson's term.

2. The chairperson shall ensure that records are kept of
the proceedings of the board of directors and is the custodian
of all books, documents, and papers filed with the board, the
minutes of meetings of the board, and the official seal of the
corporation.

(b)1. The board of directors shall meet upon the call of
the chairperson at least three times per year in Charlotte
County or in Lee County.

2. A majority of the members of the board of directors
constitutes a quorum. Except as otherwise provided in this

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section, the board of directors may take official action by a majority of the members present at any meeting at which a quorum is present. Members may not vote by proxy.

(9) POWERS AND DUTIES.--

(a) The board of directors shall adopt articles of incorporation and bylaws necessary to govern its activities. The adopted articles of incorporation and bylaws must be approved by the Board of Trustees of the Internal Improvement Trust Fund prior to filing with the Department of State.

(b) The board of directors shall review and approve any management plan developed pursuant to ss. 253.034 and 259.032 for the management of lands in the preserve prior to the submission of that plan to the Board of Trustees of the Internal Improvement Trust Fund for approval and implementation.

(c)1. Except for the constitutional powers of the commission as provided in s. 9, Art. IV, of the State Constitution, the board of directors shall have all necessary and proper powers for the exercise of the authority vested in the corporation, including, but not limited to, the power to solicit and accept donations of funds, property, supplies, or services from individuals, foundations, corporations, and other public or private entities for the purposes of this section. All funds received by the corporation shall be deposited into the operating fund authorized under this section unless otherwise directed by the Legislature.

2. The board of directors may not increase the number of its members.

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382 3. The corporation may not purchase, take, receive, lease,
383 take by gift, devise, or bequest, or otherwise acquire, own,
384 hold, improve, use, or otherwise deal in and with real property,
385 or any interest therein, wherever situated.

386 4. The corporation may not sell, convey, mortgage, pledge,
387 lease, exchange, transfer, or otherwise dispose of any real
388 property.

389 5. The corporation may not purchase, take, receive,
390 subscribe for, or otherwise acquire, own, hold, vote, use,
391 employ, sell, mortgage, lend, pledge, or otherwise dispose of,
392 or otherwise use and deal in and with, shares and other
393 interests in, or obligations of, other domestic or foreign
394 corporations, whether for profit or not for profit,
395 associations, partnerships, or individuals, or direct or
396 indirect obligations of the United States or of any other
397 government, state, territory, government district, municipality,
398 or any instrumentality thereof.

399 6. The corporation may not lend money for its corporate
400 purposes, invest and reinvest its funds, and take and hold real
401 and personal property as security for the payment of funds lent
402 or invested.

403 7. The corporation may not merge with other corporations
404 or other business entities.

405 8. The corporation may not enter into any contract, lease,
406 or other agreement related to the use of ground or surface
407 waters located in, on, or through the preserve without the
408 consent of the Board of Trustees of the Internal Improvement
409 Trust Fund and permits that may be required by the Department of

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Environmental Protection or the appropriate water management district under chapters 373 and 403.

9. The corporation may not grant any easements in, on, or across the preserve. Any easements to be granted for the use of, access to, or ingress and egress across state property within the preserve must be executed by the Board of Trustees of the Internal Improvement Trust Fund as the owners of the state property within the preserve. Any easements to be granted for the use of, access to, or ingress and egress across property within the preserve titled in the name of a local government must be granted by the governing body of that local government.

10. The corporation may not enter into any contract, lease, or other agreement related to the use and occupancy of the property within the preserve for a period of greater than 10 years.

(c) The members may, with the written approval of the commission and in consultation with the department, designate hunting, fishing, and trapping zones and may establish additional periods when no hunting, fishing, or trapping shall be permitted for reasons of public safety, administration, and the protection and enhancement of nongame habitat and nongame species, as defined under s. 372.001.

(d) The corporation shall have the sole and exclusive right to use the words "Babcock Ranch, Inc." and any seal, emblem, or other insignia adopted by the members. Without the express written authority of the corporation, no person may use the words "Babcock Ranch, Inc." as the name under which that person conducts or purports to conduct business, for the purpose

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of trade or advertisement, or in any manner that may suggest any connection with the corporation.

(e) The corporation may from time to time appoint advisory committees to further any part of this section. The advisory committees shall be reflective of the expertise necessary for the particular function for which the committee is created and may include public agencies, private entities, and not-for-profit conservation and agricultural representatives.

(f) State laws governing the procurement of commodities and services by state agencies, as provided in s. 287.057, shall apply to the corporation.

(g) The corporation and its subsidiaries must provide equal employment opportunities for all persons regardless of race, color, religion, gender, national origin, age, handicap, or marital status.

(10) OPERATING FUND, ANNUAL BUDGET, AUDIT, REPORTING REQUIREMENTS.--

(a) The board of directors may establish and manage an operating fund to address the corporation's unique cash-flow needs and to facilitate the management and operation of the preserve as a working ranch. A cash balance reserve of not more than 25 percent of the annual management and operating expenditures of the corporation may accumulate and be maintained in the operating fund at any time.

(b) The board of directors shall provide for an annual financial audit of the corporate accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General under s.

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11.45(8). The audit report shall be submitted no later than 3 months following the end of the fiscal year to the Auditor General, the President of the Senate, the Speaker of the House of Representatives, and the appropriate substantive and fiscal committees of the Legislature. The Auditor General, the Office of Program Policy Analysis and Government Accountability, and the substantive or fiscal committees of the Legislature to which legislation affecting the Babcock Ranch Preserve may be referred shall have the authority to require and receive from the corporation or from the independent auditor any records relative to the operation of the corporation.

(c) Not later than January 15 of each year, Babcock Ranch, Inc., shall submit to the Board of Trustees of the Internal Improvement Trust Fund, the President of the Senate, the Speaker of the House of Representatives, the department, and the commission a comprehensive and detailed report of its operations, activities, and accomplishments for the prior year, including information on the status of the ecological, cultural, and financial resources being managed by the corporation, and benefits provided by the preserve to local communities. The report shall also include a section describing the corporation's goals for the current year.

(d) The board of directors shall prepare an annual budget with the goal of achieving a financially self-sustaining operation within 15 full fiscal years after the initial acquisition of the Babcock Ranch by the state. The department shall provide necessary assistance, including details as necessary, to the corporation for the timely formulation and

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494 submission of an annual legislative budget request for
495 appropriations, if any, to support the administration,
496 operation, and maintenance of the preserve. A request for
497 appropriations shall be submitted to the department and shall be
498 included in the department's annual legislative budget request
499 as a separate line item appropriation. Requests for
500 appropriations shall be submitted to the department in time to
501 allow the department to meet the requirements of s. 216.023. The
502 department may not deny a request or refuse to include in its
503 annual legislative budget submission a request from the
504 corporation for an appropriation.

505 (e) Notwithstanding any other provision of law, all moneys
506 received from donations or from management of the preserve shall
507 be retained by the corporation in the operating fund and shall
508 be available, without further appropriation, for the
509 administration, preservation, restoration, operation and
510 maintenance, improvements, repairs, and related expenses
511 incurred with respect to properties being managed by the
512 corporation. Except as provided in this section, moneys received
513 by the corporation for the management of the preserve shall not
514 be subject to distribution by the state. Upon assuming
515 management responsibilities for the preserve, the corporation
516 shall optimize the generation of income based on existing
517 marketing conditions to the extent that activities do not
518 unreasonably diminish the long-term environmental, agricultural,
519 scenic, and natural values of the preserve or the multiple-use
520 and sustained-yield capability of the land.

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(f) All parties in contract with the corporation and all holders of leases from the corporation that are authorized to occupy, use, or develop properties under the management jurisdiction of the corporation must procure the proper insurance as is reasonable or customary to insure against any loss in connection with the properties or with activities authorized in the leases or contracts.

(11) COMPREHENSIVE BUSINESS PLAN.--

(a) A comprehensive business plan for the management and operation of the preserve as a working ranch and amendments to the business plan may be developed only with input from the department and the commission and may be implemented by Babcock Ranch, Inc., only upon expiration of the management agreement attached as Exhibit "E" to that certain agreement for sale and purchase approved by the Board of Trustees of the Internal Improvement Trust Fund on November 22, 2005, and by Lee County on November 20, 2005.

(b) Any final decision of Babcock Ranch, Inc., to adopt or amend the comprehensive business plan or to approve any activity related to the management of the renewable surface resources of the preserve shall be made in sessions that are open to the public. The board of directors shall establish procedures for providing adequate public information and opportunities for public comment on the proposed comprehensive business plan for the preserve or for amendments to the comprehensive business plan adopted by the members.

(c) Not less than 2 years prior to the corporation's assuming management and operation responsibilities for the

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preserve, the corporation, with input from the commission and the department, must begin developing the comprehensive business plan to carry out the purposes of this section. To the extent consistent with these purposes, the comprehensive business plan shall provide for:

1. The management and operation of the preserve as a working ranch.

2. The protection and preservation of the environmental, agricultural, scientific, scenic, geologic, watershed, fish, wildlife, historic, cultural, and recreational values of the preserve.

3. The promotion of high-quality hunting experiences for the public, with emphasis on deer, turkey, and other game species.

4. Multiple use and sustained yield of renewable surface resources within the preserve.

5. Public use of and access to the preserve for recreation.

6. The use of renewable resources and management alternatives that, to the extent practicable, benefit local communities and small businesses and enhance the coordination of management objectives with those on surrounding public or private lands. The use of renewable resources and management alternatives should provide cost savings to the corporation through the exchange of services, including, but not limited to, labor and maintenance of facilities, for resources or services provided to the corporation.

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576 (d) On or before the date on which title to the portion of
577 the Babcock Crescent B Ranch being purchased by the state, as
578 provided in s. 259.1052, is vested in the Board of Trustees of
579 the Internal Improvement Trust Fund, Babcock Ranch Management,
580 LLC, a limited liability company incorporated in the state,
581 shall provide the commission and the department with the
582 proprietary management plan and business plan in place for the
583 operation of the ranch as of November 22, 2005, the date on
584 which the board of trustees approved the purchase.

585 (12) MANAGEMENT OF PRESERVE; FEES.--

586 (a) The corporation shall assume all authority provided by
587 this section to manage and operate the preserve as a working
588 ranch upon a determination by the Board of Trustees of the
589 Internal Improvement Trust Fund that the corporation is able to
590 conduct business and that provision has been made for essential
591 services on the preserve, which, to the maximum extent
592 practicable, shall be made no later than 60 days prior to the
593 termination of the management agreement referenced in paragraph
594 (11) (a).

595 (b) Upon assuming management and operation of the
596 preserve, the corporation shall:

597 1. With input from the commission and the department,
598 manage and operate the preserve and the uses thereof, including,
599 but not limited to, the activities necessary to administer and
600 operate the preserve as a working ranch; the activities
601 necessary for the preservation and development of the land and
602 renewable surface resources of the preserve; the activities
603 necessary for interpretation of the history of the preserve on

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604 behalf of the public; the activities necessary for the
605 management, public use, and occupancy of facilities and lands
606 within the preserve; and the maintenance, rehabilitation,
607 repair, and improvement of property within the preserve.

608 2. Develop programs and activities relating to the
609 management of the preserve as a working ranch.

610 3. Negotiate directly with and enter into such agreements,
611 leases, contracts, and other arrangements with any person, firm,
612 association, organization, corporation, or governmental entity,
613 including entities of federal, state, and local governments, as
614 are necessary and appropriate to carry out the purposes and
615 activities authorized by this section.

616 4. Establish procedures for entering into lease agreements
617 and other agreements for the use and occupancy of the facilities
618 of the preserve. The procedures shall ensure reasonable
619 competition and set guidelines for determining reasonable fees,
620 terms, and conditions for such agreements.

621 5. Assess reasonable fees for admission to, use of, and
622 occupancy of the preserve to offset costs for operation of the
623 preserve as a working ranch. These fees are independent of fees
624 assessed by the commission for the privilege of hunting,
625 fishing, or pursuing outdoor recreational activities within the
626 preserve and shall be deposited into the operating fund
627 established by the board of directors under the authority
628 provided in this section.

629 (13) MISCELLANEOUS PROVISIONS.--

630 (a) Except for the powers of the commissioner provided in
631 this section and the powers of the commission provided in s. 9,

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Art. IV, of the State Constitution, the preserve shall be managed by Babcock Ranch, Inc.

(b) Officers and employees of Babcock Ranch, Inc., are private employees. At the request of the board of directors, the commission and the department may provide state employees for the purpose of implementing this section. Any state employee provided to assist the directors in implementing this section for more than 30 days shall be provided on a reimbursable basis. Reimbursement to the commission and the department shall be made from the corporation's operating fund provided under this section and not from any funds appropriated to the corporation by the Legislature.

(14) DISSOLUTION OF BABCOCK RANCH, INCORPORATED.--

(a) The corporation may be dissolved only by an act of the Legislature.

(b) Upon dissolution of the corporation, the management responsibilities provided in this section shall revert to the commission and the department unless otherwise provided by the Legislature under the act dissolving Babcock Ranch, Inc.

(c) Upon dissolution of the corporation, any cash balances of funds shall revert to the General Revenue fund or such other state fund as may be provided under the act dissolving Babcock Ranch, Inc.

Section 2. This act shall take effect on the same date that SB 1226 or similar legislation takes effect, if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 1347

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Agriculture and Environment
Appropriations Committee
Representative(s) Mayfield offered the following:

Amendment (with title amendments)

Remove line(s) 655-658 and insert:

Section 2. There is hereby appropriated \$310 million from
the Land Acquisition Trust Fund to the Department of
Environmental Protection for the purchase of the Babcock
Crescent B Ranch.

Section 3. This act shall take effect upon becoming law.

===== T I T L E A M E N D M E N T =====

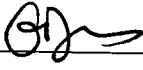

Remove line(s) 59-60 and insert:

upon the dissolution of the corporation; providing an
appropriation; providing an effective date.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7075 PCB AG 06-01 Department of Agriculture and Consumer Services
SPONSOR(S): Agriculture Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Agriculture Committee	6 Y, 0 N	Kaiser	Reese
1) Agriculture & Environment Appropriations Committee		Davis 	Dixon 
2) State Resources Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 7075 addresses a variety of issues relating to the Department of Agriculture and Consumer Services. In regards to pest control, the bill amends the definition of "employee" to clarify this person is not independent of, but under the direct control of a licensee who provides compensation, supervision, and the means necessary to perform pest control for the licensee. The bill also requires the identification cardholder be an employee. Additionally, the bill amends the definition of "independent contractor" to be a person or company that meets at least one of the conditions of independent operation. The bill provides more flexibility in the development of rules to accommodate new types of pesticides used for preventive treatments of subterranean termites in new construction. And lastly, the bill expands the products a Limited Commercial Landscape Maintenance (LCLM) certificate holder may apply to include fungicides and allows the LCLM certificate holder to provide proof of insurance once he/she has passed the certification examination.

In regards to mosquito control, the bill clarifies that the exemption to regulation under the pest control law applies only to those programs established and operated in accordance with the provisions of the mosquito control law.

The bill establishes the Farm to Fuel grants program to provide grants for research, development and demonstration of commercial applications of bioenergy technology. A Florida Farm to Fuel Advisory Council is established to provide guidance to the Commissioner of Agriculture regarding the production of bioenergy in the state. Additionally, the bill provides a corporate income tax credit for producers of ethanol or biodiesel using Florida-grown commodities.

The bill renames the Florida Food Safety and Food Security Advisory Council as the Florida Food Safety and Food Defense Advisory Council. The bill provides for all members of the Soil and Water Conservation Council to be voting members. And lastly, the bill removes the words "Form 51" in reference to the Rabies Vaccination Certificate to conform to federal law.

The bill has a fiscal impact of approximately \$5.5 million on state government in FY 2006-07 related to the Farm to Fuel grants program. The fiscal impact for the corporate income tax credit provisions is indeterminate, but negative. The effective date of this legislation is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: By requiring all identification cardholders to be employees of a pest control business licensee, only persons who are adequately trained and supervised may apply pest control substances.

Additionally, the implementation of the Farm to Fuel Program allows agricultural producers to convert products deemed as waste into a profitable commodity.

Provide limited government: The bill authorizes the Department of Agriculture and Consumer Services and the Department of Revenue to promulgate rules relating to the implementation of the Farm to Fuel Program and the associated tax credit.

Ensure lower taxes: The bill provides for a tax credit for taxpayers who produce either ethanol or biodiesel at a facility located in the state using Florida-grown commodities.

B. EFFECT OF PROPOSED CHANGES:

Pest Control

Currently, each employee who performs pest control for a pest control licensee in Florida is required¹ to have an identification card issued by the Department of Agriculture and Consumer Services (department). Additionally, the law requires the identification card holder to be an employee, as defined by s. 482.021(7), F.S., and prohibits independent contractors from being issued identification cards.²

The Bureau of Entomology and Pest Control (bureau), within the department reports that recent investigations have determined that an unknown number of business licensees have been obtaining identification cards for individuals who are operating as independent business entities. Independent business entities who secure their own clients, collect money for their services, and provide their own vehicles and equipment, operate without the level of supervision and training typical of identification cardholders who are truly employees of pest control licensees. The department fears the lack of supervision and training provided to independent business entities, as well as a lack of liability insurance, present a danger to public safety.

The current definition of independent contractor requires several elements of independent activity be present before disciplinary action can be taken against a business licensee and the identification card of the independent contractor can be revoked. The department reports this increases the level of difficulty for developing evidence for a disciplinary action, as well as allowing business licensees to continue to provide identification cards to independent contractors.

The bill amends the definition of "employee" to clarify this person is not independent of, but under the direct control of, a licensee who provides compensation, supervision, and the means necessary to perform pest control for the licensee. The bill also requires the identification cardholder be an employee, as defined in s. 482.021(7), F.S. Additionally, the bill amends the definition of "independent contractor" to be a person or company that meets at least one of the conditions of independent operation.

¹ s. 482.091(1)(a), F.S.

² "Independent contractor" is defined in s. 482.021(12), F.S.

The department currently has rule-making authority³ regarding the application of pesticides used in the preventive treatment for subterranean termites for new construction. This provision was established when the primary treatment was the application of large volumes of insecticides to the soil during construction. Since that time, new treatment methods have been developed, such as baiting systems, non-repellant termiticides, and direct application to wood. The bill provides more flexibility in the development of rules regarding these types of treatments.

Florida law⁴ establishes a certification category for persons who wish to apply certain low-risk pesticides to plant beds and ornamentals as part of landscape maintenance activities. Only persons who acquire this certification are authorized to perform the application. To date, approximately 3,200 Limited Commercial Landscape Maintenance (LCLM) certifications have been issued to persons who work in the landscape maintenance industry and apply pesticides as part of their services. Chapter 482, F.S., places restrictions on the areas and types of pesticides certificate holders may apply. As technology has improved and new products have been developed, current law limits the ability of the certificate holders to perform landscape maintenance activities properly. The bill expands the types of products the certificate holders may apply to include fungicides.

Additionally, current law requires those seeking certification to obtain proof of insurance **prior** to passing the examination. According to the department, this requirement places an undue burden on applicants. The department estimates approximately 30,000 persons in the industry require LCLM certification. Voluntary compliance is, in part, hindered by current statutory requirements. The bill amends current law to require proof of insurance **after** passing the examination. The department believes this will result in increased compliance with the Florida Structural Pest Control Act and increase the number of individuals who will benefit from the pesticide application and safety training provided as part of the certification process.

Mosquito Control

Mosquito control is, in general, regulated by Chapter 388, F.S. Section 482.211, F.S., deals with the establishment and regulation of mosquito control programs operated by local governments. According to the department, a number of private companies have recently begun advertising mosquito control application services for consumers.

The bill clarifies that the exemption to regulation under Chapter 482, F.S., applies only to those programs established and operated in accordance with the provisions of Chapter 388, F.S. The department believes this will prevent unlicensed and untrained operators from conducting pest control activities under the guise of mosquito control.

Florida Food Safety and Food Defense Advisory Council

During the 2003 legislative session, the Florida Food Safety and Food Security Advisory Council (council) was created. The council had previously existed as an *ad hoc* task force created by the Commissioner of Agriculture to ensure the safety of Florida's food supply in the aftermath of 9-11 and the Mad Cow disease outbreak in Europe. The council is composed of representatives from every facet of the food industry: production, processing, distribution, sales, consumers, food industry groups, experts in food safety, agencies charged with food safety oversight, and legislative representatives. The council provides a forum for presenting, investigating, and evaluating issues of current importance in food safety. During the course of its meetings, it came to the attention of the council that, in many nations, "food security" refers to maintaining an availability of an adequate supply of food. "Food defense" is used to refer to the "protection" of the food supply. The federal government is in the process of making the necessary changes to conform with those in use internationally and encourages states to do the same.

³ s. 482.051(5), F.S.

⁴ s. 482.156, F.S.

The bill renames the Florida Food Safety and Food Security Advisory Council as the Florida Food Safety and Food Defense Advisory Council.

Florida Farm to Fuel Act

The United States Environmental Protection Agency (EPA) recently developed new standards paving the way for the Renewable Fuel Standard Program. This program focuses on reducing vehicle emissions and reducing the United States dependency on foreign energy sources by increasing the use of fuels produced from American crops by 2012. The new standards complement the Energy Policy Act of 2005, which requires that 2.78 percent of the gasoline sold or dispensed to U.S. motorists in 2006 be renewable fuel. Various renewable fuels can be used to meet the requirements of the program, including ethanol and bio-diesel.⁵

Due to the vast amount of farm acreage, combined with a climate that allows crop production year round, Florida is well suited to producing energy from crops. The bill establishes the Farm to Fuel Grants Program (program) within the department. The purpose of the program is to provide grants for research, development, and demonstration of commercial applications of bioenergy technology. The bill provides criteria for awarding grants.

The bill also establishes a Florida Farm to Fuel Advisory Council to provide advice and counsel to the Commissioner of Agriculture. The bill provides for the Commissioner of Agriculture to appoint members to the council representing the agriculture industry, researchers, fuel suppliers, technology manufacturers, environmental interests, or others who may be a stakeholder in the program. The department is given rule-making authority to implement the provisions of the program.

The bill also provides a corporate income tax credit for a taxpayer producing ethanol or biodiesel at a facility located in the state using Florida-grown commodities. The credit is equal to 20 cents per gallon of ethanol or biodiesel produced at the facility using Florida-grown commodities. The Department of Revenue is given rule-making authority to implement the provisions of the tax credit entitlement. The bill further provides for a repeal of the tax credit on July 1, 2010.

Soil and Water Conservation Council

Also during the 2003 legislative session, the Agricultural Water Policy Group was integrated into the Soil and Water Conservation Council (council) by adding twelve non-voting *ex officio* members. These members represented the same interest groups that were represented in the Water Policy Group and are appointed by recommendations from the various interest groups.

In the two years since the integration, the council has become more diverse with a high level of participation from all members, voting or not. At the recommendation of the chair of the council, and with the support of the Commissioner of Agriculture, the bill provides for all members of the council to be voting members.

Rabies Vaccination

Due to a change in forms at the federal level, it is necessary to amend current Florida statutes to reflect the change at the state level. The bill removes the words "Form 51" in reference to the Rabies Vaccination Certificate.

C. SECTION DIRECTORY:

Section 1: Amends s. 482.021, F.S.; revising definitions.

Section 2: Amends s. 482.051, F.S.; revising requirements regarding rule adoption as it relates to pesticides for subterranean termites.

Section 3: Amends s. 482.091, F.S.; clarifying provisions related to identification cards for pest control personnel.

Section 4: Amends s. 482.156, F.S.; requiring certification of commercial landscape personnel; revising materials used; removing obsolete provisions relating to fees.

Section 5: Amends s. 482.211, F.S.; providing an exemption for local governments relating to mosquito control.

Section 6: Amends s. 500.033, F.S.; renaming the Florida Food Safety and Food Security Advisory Council.

Section 7: Creates s. 570.954, F.S.; creating the Florida Farm to Fuel Act; providing findings; creating a grant program; providing criteria for grant distribution; establishing an advisory council; and, authorizing the Department of Agriculture and Consumer Services to adopt rules relating to implementation.

Section 8: Creates s. 220.192, F.S.; providing tax credits for certain producers of alternative fuel; authorizing the Department of Revenue to adopt rules relating to implementation; and, providing for future repeal of the tax credits.

Section 9: Amends s. 582.03, F.S.; revising the composition of the Soil and Water Conservation Council.

Section 10: Amends s. 828.30, F.S.; updating a reference to the Rabies Vaccination Certificate.

Section 11: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments below.

2. Expenditures:

See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Taxpayers producing ethanol or biodiesel at Florida facilities are eligible for corporate income tax credits.

D. FISCAL COMMENTS:

Establishment of the Farm to Fuel grants program will have an General Revenue impact of \$5.5 million. Additionally, the Revenue Estimating Conference (REC) met on Friday, March 31, 2006, and reviewed the fiscal impact of the tax credit. The estimated impact to state funds is negative and indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services is given rule-making authority relating to the implementation of the Farm to Fuel Grants Program.

The Department of Revenue is given rule-making authority relating to the implementation of the tax credit related to the Farm to Fuel Grants Program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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1 A bill to be entitled
2 An act relating to the Department of Agriculture and
3 Consumer Services; amending s. 482.021, F.S.; revising the
4 definitions of the terms "employee" and "independent
5 contractor" for purposes of pest control regulation;
6 amending s. 482.051, F.S.; revising certain requirements
7 of the department to adopt rules relating to the use of
8 pesticides for preventing subterranean termites in new
9 construction; amending s. 482.091, F.S.; clarifying
10 provisions governing the performance of pest control
11 services; amending s. 482.156, F.S.; requiring
12 certification of individual commercial landscape
13 maintenance personnel; revising the types of materials
14 such personnel may use; removing obsolete provisions
15 relating to fees; clarifying requirements relating to
16 proof of education and insurance; amending s. 482.211,
17 F.S.; clarifying exemption of certain mosquito control
18 activities from regulation; amending s. 500.033, F.S.;
19 renaming the Florida Food Safety and Food Security
20 Advisory Council as the Florida Food Safety and Food
21 Defense Advisory Council and revising duties accordingly;
22 creating s. 570.954, F.S.; providing a short title;
23 providing legislative findings; providing purposes;
24 providing definitions; establishing the Farm to Fuel
25 Grants Program; providing criteria for distribution of
26 grants; authorizing appointment of an advisory council;
27 providing purposes; providing membership; authorizing the
28 department to adopt rules; creating s. 220.192, F.S.;

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providing certain tax credits for certain producers of ethanol and biodiesel; authorizing the Department of Revenue to adopt certain rules relating to the tax credits; providing for future repeal of the tax credits; amending s. 582.06, F.S.; revising the membership of the Soil and Water Conservation Council; amending s. 828.30, F.S.; updating references to the Rabies Vaccination Certificate; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (7) and (12) of section 482.021, Florida Statutes, are amended to read:

482.021 Definitions.--For the purposes of this chapter, and unless otherwise required by the context, the term:

(7) "Employee" means a person who is employed by a licensee that provides that person with necessary training, supervision, pesticides, equipment, and insurance and who receives compensation from and is under the personal supervision and direct control of the licensee's certified operator in charge and licensee from whose ~~which~~ compensation ~~of~~ the licensee regularly deducts and matches federal insurance contributions and federal income and Social Security taxes.

(12) "Independent contractor" means an entity separate from the licensee that:

(a) Receives moneys from a customer which are deposited in a bank account other than that of the licensee;

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(b) Owns or supplies its own service vehicle, equipment, and pesticides; ~~or~~

(c) Maintains a business operation, office, or support staff independent of the licensee's direct control;

(d) Pays its own operating expenses such as fuel, equipment, pesticides, and materials; or

(e) ~~(e)~~ Pays its own workers' ~~worker's~~ compensation as an independent contractor.

Section 2. Subsection (5) of section 482.051, Florida Statutes, is amended to read:

482.051 Rules.--The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. Prior to proposing the adoption of a rule, the department shall counsel with members of the pest control industry concerning the proposed rule. The department shall adopt rules for the protection of the health, safety, and welfare of pest control employees and the general public which require:

(5) That any pesticide used as the primary preventive treatment for ~~preconstruction treatments for the prevention of~~ subterranean termites in new construction be applied in the amount, concentration, and treatment area in accordance with the label; that a copy of the label of the registered pesticide being applied be carried in a vehicle at the site where the pesticide is being applied; and that the licensee maintain for 3 years the record of each preconstruction treatment, indicating the date of treatment, the location or address of the property treated, the total square footage of the structure treated, the

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type of pesticide applied, the concentration of each substance in the mixture applied, and the total amount of pesticide applied.

Section 3. Paragraph (a) of subsection (2) of section 482.091, Florida Statutes, is amended to read:

482.091 Employee identification cards.--

(2)(a) An identification cardholder must be an employee of the licensee and work under the direction and supervision of the licensee's certified operator in charge and shall ~~may~~ not be an independent contractor. An identification cardholder shall ~~operate may perform~~ only ~~pest control services~~ out of, and ~~or~~ for customers assigned ~~arising~~ from, the licensee's licensed business location. An identification cardholder shall ~~may~~ not perform any pest control independently of and without the knowledge of the licensee and the licensee's certified operator in charge and shall ~~may~~ perform pest control only for the licensee's customers.

Section 4. Subsections (1), (2), and (3) of section 482.156, Florida Statutes, are amended to read:

482.156 Limited certification for commercial landscape maintenance personnel.--

(1) The department shall establish a limited certification category for individual commercial landscape maintenance personnel to authorize them to apply herbicides for controlling weeds in plant beds and to perform integrated pest management on ornamental plants using ~~the following materials:~~ insecticides and fungicides having the signal word "caution" but not having the word "warning" or "danger" on the label, ~~insecticidal soaps,~~

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~~horticulatural oils, and bacillus thuringiensis formulations.~~ The application equipment that may be used by a person certified pursuant to this section is limited to portable, handheld 3-gallon compressed air sprayers or backpack sprayers having no more than a 5-gallon capacity and does not include power equipment.

(2)(a) A person seeking limited certification under this section must pass an examination given by the department. Each application for examination must be accompanied by an examination fee set by rule of the department, in an amount of not more than \$150 or less than \$50; ~~however, until a rule setting this fee is adopted by the department, the examination fee is \$50.~~ Prior to the department's issuing a limited certification under this section, each person applying making ~~application for the~~ certification ~~under this section~~ must furnish proof of having a certificate of insurance which states that the employer meets the requirements for minimum financial responsibility for bodily injury and property damage required by s. 482.071(4).

(b) To be eligible to take the examination, an applicant must have completed 8 classroom hours of plant bed and ornamental continuing education training approved by the department and provide sufficient proof, according to criteria established by department rule, that the applicant has been in the landscape maintenance business for at least 3 years.

~~(b)~~ The department shall provide the appropriate reference materials for the examination and make the examination readily

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accessible and available to applicants at least quarterly or as necessary in each county.

(3) An application for recertification under this section must be made annually and be accompanied by a recertification fee set by rule of the department, in an amount of not more than \$75 or less than \$25, ~~however, until a rule setting this fee is adopted by the department, the fee for recertification is \$25.~~

The application must also be accompanied by proof of having completed 4 classroom hours of acceptable continuing education and the same proof of having a certificate of insurance as is required for issuance of this initial certification. After a grace period not exceeding 30 calendar days following the annual date that recertification is due, a late renewal charge of \$50 shall be assessed and must be paid in addition to the renewal fee. Unless timely recertified, a certificate automatically expires 180 calendar days after the anniversary recertification date. Subsequent to such expiration, a certificate may be issued only upon successful reexamination and upon payment of the examination fees due.

Section 5. Subsection (7) of section 482.211, Florida Statutes, is amended to read:

482.211 Exemptions.--This chapter does not apply to:

(7) Area Mosquito control activities conducted by a local government or district established under chapter 388 or by a contractor of the local government or district.

Section 6. Section 500.033, Florida Statutes, is amended to read:

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500.033 Florida Food Safety and Food Defense ~~Security~~
Advisory Council.--

(1) There is created the Florida Food Safety and Food
Defense ~~Security~~ Advisory Council for the purpose of serving as
a forum for presenting, investigating, and evaluating issues of
current importance to the assurance of a safe and secure food
supply to the citizens of Florida. The Florida Food Safety and
Food Defense ~~Security~~ Advisory Council shall consist of, but not
be limited to: the Commissioner of Agriculture or his or her
designee; the Secretary of Health or his or her designee; the
Secretary of Business and Professional Regulation or his or her
designee; the person responsible for domestic security with the
Florida Department of Law Enforcement; members representing the
production, processing, distribution, and sale of foods;
consumers or ~~and/or~~ members of citizens groups; representatives
of ~~or~~ food industry groups; scientists or other experts in
aspects of food safety from state universities; representatives
from local, state, and federal agencies that are charged with
responsibilities for food safety or food defense ~~security~~; the
chairs of the Agriculture Committees of the Senate and the House
of Representatives or their designees; and the chairs of the
committees of the Senate and the House of Representatives with
jurisdictional oversight of home defense issues or their
designees. The Commissioner of Agriculture shall appoint the
remaining members. The council shall make periodic reports to
the Department of Agriculture and Consumer Services concerning
findings and recommendations in the area of food safety and food
defense ~~security~~.

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(2) The council shall consider the development of appropriate advice or recommendations on food safety or food ~~defense security~~ issues. In the discharge of their duties, the council members may receive for review confidential data exempt from the provisions of s. 119.07(1); however, it is unlawful for any member of the council to use the data for his or her advantage or reveal the data to the general public.

Section 7. Section 570.954, Florida Statutes, is created to read:

570.954 Farm to fuel.--

(1) This section may be cited as the "Florida Farm to Fuel Act."

(2) The Legislature finds that:

(a) Utilization of Florida crops and biomass for production of bioenergy is important for the state's future energy stability, protection of its environment, and continued viability of its agriculture industry.

(b) Development of bioenergy will help to reduce demand for foreign fuels, reduce pollution, and promote economic growth.

(c) Assistance in the production and distribution of bioenergy in the state is needed.

(d) Production of bioenergy in the state is ideal due to the state's vast amount of farm acreage and mild climate, which permit crops to be grown virtually year round, and the availability of other biomass.

(3) This section is intended to provide grants to:

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(a) Stimulate capital investment in the state and enhance the market for and promote the production and distribution of bioenergy.

(b) Advance the already growing establishment of bioenergy technologies in the state and attract additional bioenergy production to the state.

(c) Demonstrate technologies or processes that convert Florida-grown crops, agricultural wastes and residues, and other biomass into bioenergy.

(4) As used in this section, the term:

(a) "Biomass" means a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, agricultural and orchard crops, waste products from livestock and poultry operations and food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfills.

(b) "Department" means the Department of Agriculture and Consumer Services.

(c) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other entity, public or private, however organized.

(5) The Farm to Fuel Grants Program is established within the department to provide grants for research, development, and demonstration of commercial applications of bioenergy technology.

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(a) Grants made under this section for bioenergy projects may be made to any person who meets the criteria in this section.

(b) Factors the department may consider in awarding grants include, but are not limited to, the degree to which:

1. The project stimulates in-state capital investment and economic development in metropolitan and rural areas, including the creation of jobs and the future development of a commercial market for bioenergy.

2. The project produces bioenergy from Florida-grown crops or biomass.

3. The project demonstrates efficient use of energy and material resources.

4. The project fosters overall understanding and appreciation of bioenergy technologies.

5. Matching funds and in-kind contributions from an applicant are available.

6. The project duration and the timeline for expenditures are acceptable.

7. The project has a reasonable assurance of enhancing the value of agricultural products or will expand agribusiness in the state.

8. Preliminary market and feasibility research has been conducted by the applicant or others and shows there is a reasonable assurance of a potential market.

(6) Pursuant to s. 570.0705, the Commissioner of Agriculture and Consumer Services may appoint a Florida Farm to Fuel Advisory Council consisting of a diverse group of

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stakeholders that includes, but is not limited to,
representatives of the agriculture industry, researchers, fuel
suppliers, technology manufacturers, and environmental
interests. The council shall provide advice and counsel to the
Commissioner of Agriculture and Consumer Services on the
production of bioenergy in the state.

(7) The department may adopt rules pursuant to ss.
120.536(1) and 120.54 to implement the provisions of this
section.

Section 8. Section 220.192, Florida Statutes, is created
to read:

220.192 Farm to fuel production tax credit.--

(1) For tax years beginning on or after January 1, 2007, a
credit against the tax imposed under this chapter shall be
granted in an amount to be determined as follows:

(a) A taxpayer who produces ethanol at a facility located
in this state is entitled to a credit against the taxpayer's
state tax liability equal to the product of 20 cents multiplied
by the number of gallons of ethanol produced at the facility
using Florida-grown commodities.

(b) A taxpayer who produces biodiesel at a facility
located in this state is entitled to a credit against the
taxpayer's state tax liability equal to the product of 20 cents
multiplied by the number of gallons of biodiesel produced at the
facility using Florida-grown commodities.

(2) The department shall adopt rules relating to the forms
required to claim a tax credit under this section, the
requirements and basis for establishing an entitlement to a

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credit, and the examination and audit procedures required to administer this section.

(3) This section is repealed July 1, 2010.

Section 9. Paragraphs (b) and (c) of subsection (1) of section 582.06, Florida Statutes, are amended to read:

582.06 Soil and Water Conservation Council; powers and duties.--

(1) COMPOSITION.--The Soil and Water Conservation Council is created in the Department of Agriculture and Consumer Services and shall be composed of 23 members as follows:

(b) Twelve ~~nonvoting ex officio~~ members shall include one representative each from the Department of Environmental Protection, the five water management districts, the Institute of Food and Agricultural Sciences at the University of Florida, the United States Department of Agriculture Natural Resources Conservation Service, the Florida Association of Counties, and the Florida League of Cities, and two representatives of environmental interests.

(c) All members shall be appointed by the commissioner. ~~Ex officio~~ Members appointed pursuant to paragraph (b) shall be appointed by the commissioner from recommendations provided by the organization or interest represented.

Section 10. Subsection (3) of section 828.30, Florida Statutes, is amended to read:

828.30 Rabies vaccination of dogs, cats, and ferrets.--

(3) Upon vaccination against rabies, the licensed veterinarian shall provide the animal's owner and the animal control authority with a rabies vaccination certificate. Each

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331 animal control authority and veterinarian shall use the ~~Form 51,~~
 332 "Rabies Vaccination Certificate," of the National Association of
 333 State Public Health Veterinarians (NASPHV) or an equivalent form
 334 approved by the local government that contains all the
 335 information required by the NASPHV Rabies Vaccination
 336 Certificate ~~Form 51~~. The veterinarian who administers the rabies
 337 vaccine to an animal as required under this section may affix
 338 his or her signature stamp in lieu of an actual signature.

339 Section 11. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. HB 7075

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Agriculture & Environment
Appropriations

Representative Poppell offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (7) and (12) of section 482.021,
Florida Statutes, are amended to read:

482.021 Definitions.--For the purposes of this chapter,
and unless otherwise required by the context, the term:

(7) "Employee" means a person who is employed by a
licensee that provides that person with necessary training,
supervision, pesticides, equipment, and insurance and who
receives compensation from and is under the personal supervision
and direct control of the licensee's certified operator in
charge and licensee from whose ~~which~~ compensation of the
licensee regularly deducts and matches federal insurance
contributions and federal income and Social Security taxes.

(12) "Independent contractor" means an entity separate
from the licensee that:

(a) Receives moneys from a customer which are deposited in
a bank account other than that of the licensee;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

(b) Owns or supplies its own service vehicle, equipment, and pesticides; ~~or~~

(c) Maintains a business operation, office, or support staff independent of the licensee's direct control;

(d) Pays its own operating expenses such as fuel, equipment, pesticides, and materials; or

(e)(e) Pays its own workers' ~~worker's~~ compensation as an independent contractor.

Section 2. Subsection (5) of section 482.051, Florida Statutes, is amended to read:

482.051 Rules.--The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. Prior to proposing the adoption of a rule, the department shall counsel with members of the pest control industry concerning the proposed rule. The department shall adopt rules for the protection of the health, safety, and welfare of pest control employees and the general public which require:

(5) That any pesticide used as the primary preventive treatment for ~~preconstruction treatments for the prevention of~~ subterranean termites in new construction be applied in the amount, concentration, and treatment area in accordance with the label; that a copy of the label of the registered pesticide being applied be carried in a vehicle at the site where the pesticide is being applied; and that the licensee maintain for 3 years the record of each preconstruction treatment, indicating the date of treatment, the location or address of the property treated, the total square footage of the structure treated, the type of pesticide applied, the concentration of each substance in the mixture applied, and the total amount of pesticide applied.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Section 3. Subsection (2) of section 482.091, Florida Statutes, is amended to read:

482.091 Employee identification cards.--

(2)(a) An identification cardholder must be an employee of the licensee and work under the direction and supervision of the licensee's certified operator in charge and shall ~~may~~ not be an independent contractor. An identification cardholder shall ~~operate may perform~~ only ~~pest control services~~ out of, and ~~or~~ for customers assigned ~~arising~~ from, the licensee's licensed business location. An identification cardholder shall ~~may~~ not perform any pest control independently of and without the knowledge of the licensee and the licensee's certified operator in charge and shall ~~may~~ perform pest control only for the licensee's customers.

Section 4. Subsections (1), (2), and (3) of section 482.156, Florida Statutes, are amended to read:

482.156 Limited certification for commercial landscape maintenance personnel.--

(1) The department shall establish a limited certification category for individual commercial landscape maintenance personnel to authorize them to apply herbicides for controlling weeds in plant beds and to perform integrated pest management on ornamental plants using ~~the following materials:~~ insecticides and fungicides having the signal word "caution" but not having the word "warning" or "danger" on the label, ~~insecticidal soaps, horticultural oils, and bacillus thuringiensis formulations.~~ The application equipment that may be used by a person certified pursuant to this section is limited to portable, handheld 3-gallon compressed air sprayers or backpack sprayers having no more than a 5-gallon capacity and does not include power equipment.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

85 (2) (a) A person seeking limited certification under this
86 section must pass an examination given by the department. Each
87 application for examination must be accompanied by an
88 examination fee set by rule of the department, in an amount of
89 not more than \$150 or less than \$50, ~~however, until a rule~~
90 ~~setting this fee is adopted by the department, the examination~~
91 ~~fee is \$50.~~ Prior to the department's issuing a limited
92 certification under this section, each person applying making
93 application for the certification under this section must
94 furnish proof of having a certificate of insurance which states
95 that the employer meets the requirements for minimum financial
96 responsibility for bodily injury and property damage required by
97 s. 482.071(4).

98 (b) To be eligible to take the examination, an applicant
99 must have completed 68 classroom hours of plant bed and
100 ornamental continuing education training approved by the
101 department and provide sufficient proof, according to criteria
102 established by department rule, ~~that the applicant has been in~~
103 ~~the landscape maintenance business for at least 3 years.~~

104 ~~(b)~~ The department shall provide the appropriate reference
105 materials for the examination and make the examination readily
106 accessible and available to applicants at least quarterly or as
107 necessary in each county.

108 (3) An application for recertification under this section
109 must be made annually and be accompanied by a recertification
110 fee set by rule of the department, in an amount of not more than
111 \$75 or less than \$25, ~~however, until a rule setting this fee is~~
112 ~~adopted by the department, the fee for recertification is \$25.~~
113 The application must also be accompanied by proof of having
114 completed 4 classroom hours of acceptable continuing education
115 and the same proof of having a certificate of insurance as is

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required for issuance of this ~~initial~~ certification. After a grace period not exceeding 30 calendar days following the annual date that recertification is due, a late renewal charge of \$50 shall be assessed and must be paid in addition to the renewal fee. Unless timely recertified, a certificate automatically expires 180 calendar days after the anniversary recertification date. Subsequent to such expiration, a certificate may be issued only upon successful reexamination and upon payment of the examination fees due.

Section 5. Subsection (7) of section 482.211, Florida Statutes, is amended to read:

482.211 Exemptions.--This chapter does not apply to:

(7) Area Mosquito control activities conducted by a local government or district established under chapter 388 or by special act or by a contractor of the local government or district.

Section 6. Section 500.033, Florida Statutes, is amended to read:

500.033 Florida Food Safety and Food Defense Security Advisory Council.--

(1) There is created the Florida Food Safety and Food Defense Security Advisory Council for the purpose of serving as a forum for presenting, investigating, and evaluating issues of current importance to the assurance of a safe and secure food supply to the citizens of Florida. The Florida Food Safety and Food Defense Security Advisory Council shall consist of, but not be limited to: the Commissioner of Agriculture or his or her designee; the Secretary of Health or his or her designee; the Secretary of Business and Professional Regulation or his or her designee; the person responsible for domestic security with the ~~Florida~~ Department of Law Enforcement; members representing the

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147 production, processing, distribution, and sale of foods;
148 consumers or ~~and/or~~ members of citizens groups; representatives
149 of ~~or~~ food industry groups; scientists or other experts in
150 aspects of food safety from state universities; representatives
151 from local, state, and federal agencies that are charged with
152 responsibilities for food safety or food defense ~~security~~; the
153 chairs of the Agriculture Committees of the Senate and the House
154 of Representatives or their designees; and the chairs of the
155 committees of the Senate and the House of Representatives with
156 jurisdictional oversight of home defense issues or their
157 designees. The Commissioner of Agriculture shall appoint the
158 remaining members. The council shall make periodic reports to
159 the Department of Agriculture and Consumer Services concerning
160 findings and recommendations in the area of food safety and food
161 defense ~~security~~.

162 (2) The council shall consider the development of
163 appropriate advice or recommendations on food safety or food
164 defense ~~security~~ issues. In the discharge of their duties, the
165 council members may receive for review confidential data exempt
166 from the provisions of s. 119.07(1); however, it is unlawful for
167 any member of the council to use the data for his or her
168 advantage or reveal the data to the general public.

169 Section 7. Subparagraph 4 of paragraph (a) of subsection
170 (1) of section 500.12, Florida Statutes, is created to read:

171 500.12 Food permits; building permits.--

172 (1)(a) A food permit from the department is required of
173 any person who operates a food establishment or retail food
174 store, except:

175 1. Persons operating minor food outlets, including, but
176 not limited to, video stores, that sell commercially
177 prepackaged, nonpotentially hazardous candy, chewing gum, soda,

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178 or popcorn, provided the shelf space for those items does not
179 exceed 12 linear feet and no other food is sold by the minor
180 food outlet.

181 2. Persons subject to continuous, onsite federal or state
182 inspection.

183 3. Persons selling only legumes in the shell, either
184 parched, roasted, or boiled.

185 4. Persons producing and selling in the state one hundred
186 percent Florida sugar cane syrup directly to the consumer or at
187 roadside stands, farmers markets, and similar locations,
188 provided each container or bottle of syrup has a label stating
189 the producer's name and address, product type, net weight or
190 volume of product, and the following statement, "This product
191 has not been produced in a facility inspected and permitted by
192 the Florida Department of Agriculture and Consumer Services".

193 Section 8. Paragraphs (b) and (c) of subsection (1) of
194 section 582.06, Florida Statutes, are amended to read:

195 582.06 Soil and Water Conservation Council; powers and
196 duties.--

197 (1) COMPOSITION.--The Soil and Water Conservation Council
198 is created in the Department of Agriculture and Consumer
199 Services and shall be composed of 23 members as follows:

200 (b) ~~Twelve nonvoting ex officio~~ members shall include one
201 representative each from the Department of Environmental
202 Protection, the five water management districts, the Institute
203 of Food and Agricultural Sciences at the University of Florida,
204 the United States Department of Agriculture Natural Resources
205 Conservation Service, the Florida Association of Counties, and
206 the Florida League of Cities, and two representatives of
207 environmental interests.

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(c) All members shall be appointed by the commissioner. ~~Ex~~
~~officie~~ Members appointed pursuant to paragraph (b) shall be
appointed by the commissioner from recommendations provided by
the organization or interest represented.

Section 9. Paragraph (h) is added to subsection (2) of
section 810.09, Florida Statutes, to read:

810.09 Trespass on property other than structure or
conveyance.--

(2)

(h) The offender commits a felony of the third degree,
punishable as provided in ss. 775.082, 775.083 or 775.084, if
the property trespassed upon is an agricultural chemicals
manufacturing facility that is legally posted and identified in
substantially the following manner: "THIS AREA IS A DESIGNATED
AGRICULTURAL CHEMICALS MANUFACTURING FACILITY, AND ANYONE WHO
TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

Section 10. Subsection (12) is added to section 810.011,
Florida Statutes, to read:

810.011 Definitions.--As used in this chapter:

(12) "Agricultural chemicals manufacturing facility" means
any facility, associated properties, and associated structures
that are used for the manufacture, processing, or storage of
agricultural chemicals in Industry Group 287 as defined in the
Standard Industrial Classification Manual.

Section 11. Subsection (3) of section 828.30, Florida
Statutes, is amended to read:

828.30 Rabies vaccination of dogs, cats, and ferrets.--

(3) Upon vaccination against rabies, the licensed
veterinarian shall provide the animal's owner and the animal
control authority with a rabies vaccination certificate. Each
animal control authority and veterinarian shall use the ~~Form 51,~~

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"Rabies Vaccination Certificate" of the National Association of State Public Health Veterinarians (NASPHV) or an equivalent form approved by the local government that contains all the information required by the NASPHV Rabies Vaccination Certificate Form 51. The veterinarian who administers the rabies vaccine to an animal as required under this section may affix his or her signature stamp in lieu of an actual signature.

Section 12. Paragraph (c) of subsection (7) and subsection (11) of section 403.067, Florida Statutes, are amended to read:

403.067 Establishment and implementation of total maximum daily loads.--

(7) DEVELOPMENT OF BASIN MANAGEMENT PLANS AND IMPLEMENTATION OF TOTAL MAXIMUM DAILY LOADS.--

(c) Best management practices.--

1. The department, in cooperation with the water management districts and other interested parties, as appropriate, may develop suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for nonagricultural nonpoint pollutant sources in allocations developed pursuant to subsection (6) and this subsection. These practices and measures may be adopted by rule by the department and the water management districts pursuant to ss. 120.536(1) and 120.54, and, where adopted by rule, shall be implemented by those parties responsible for nonagricultural nonpoint source pollution.

2. The Department of Agriculture and Consumer Services may develop and adopt by rule pursuant to ss. 120.536(1) and 120.54 suitable interim measures, best management practices, or other measures necessary to achieve the level of pollution reduction established by the department for agricultural pollutant sources

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270 in allocations developed pursuant to subsection (6) and this
271 subsection or for programs implemented pursuant to paragraph
272 (11) (b). These practices and measures may be implemented by
273 those parties responsible for agricultural pollutant sources and
274 the department, the water management districts, and the
275 Department of Agriculture and Consumer Services shall assist
276 with implementation. In the process of developing and adopting
277 rules for interim measures, best management practices, or other
278 measures, the Department of Agriculture and Consumer Services
279 shall consult with the department, the Department of Health, the
280 water management districts, representatives from affected
281 farming groups, and environmental group representatives. Such
282 rules shall also incorporate provisions for a notice of intent
283 to implement the practices and a system to assure the
284 implementation of the practices, including recordkeeping
285 requirements.

286 3. Where interim measures, best management practices, or
287 other measures are adopted by rule, the effectiveness of such
288 practices in achieving the levels of pollution reduction
289 established in allocations developed by the department pursuant
290 to subsection (6) and this subsection or in programs implemented
291 pursuant to paragraph (11) (b) shall be verified at
292 representative sites by the department. The department shall use
293 best professional judgment in making the initial verification
294 that the best management practices are reasonably expected to be
295 effective and, where applicable, shall notify the appropriate
296 water management district or ~~and~~ the Department of Agriculture
297 and Consumer Services of its initial verification prior to the
298 adoption of a rule proposed pursuant to this paragraph.
299 Implementation, in accordance with rules adopted under this
300 paragraph, of practices that have been initially verified to be

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effective, or verified to be effective by monitoring at representative sites, by the department, shall provide a presumption of compliance with state water quality standards and release from the provisions of s. 376.307(5) for those pollutants addressed by the practices, and the department is not authorized to institute proceedings against the owner of the source of pollution to recover costs or damages associated with the contamination of surface water or groundwater caused by those pollutants. Research funded by the department, a water management district, or the Department of Agriculture and Consumer Services to develop or demonstrate interim measures or best-management practices is granted a presumption of compliance with state water quality standards and release from s. 376.307(5) which is limited to the research site for those pollutants addressed by the practices.

4. Where water quality problems are demonstrated, despite the appropriate implementation, operation, and maintenance of best management practices and other measures according to rules adopted under this paragraph, the department, a water management district, or the Department of Agriculture and Consumer Services, in consultation with the department, shall institute a reevaluation of the best management practice or other measure. Should the reevaluation determine that the best management practice or other measure requires modification, the department, a water management district, or the Department of Agriculture and Consumer Services, as appropriate, shall revise the rule to require implementation of the modified practice within a reasonable time period as specified in the rule.

5. Individual agricultural records relating to processes or methods of production, or relating to costs of production, profits, or other financial information which are otherwise not

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public records, which are reported to the Department of Agriculture and Consumer Services pursuant to subparagraphs 3. and 4. or pursuant to any rule adopted pursuant to subparagraph 2. shall be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Upon request of the department or any water management district, the Department of Agriculture and Consumer Services shall make such individual agricultural records available to that agency, provided that the confidentiality specified by this subparagraph for such records is maintained. This subparagraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

6. The provisions of subparagraphs 1. and 2. shall not preclude the department or water management district from requiring compliance with water quality standards or with current best management practice requirements set forth in any applicable regulatory program authorized by law for the purpose of protecting water quality. Additionally, subparagraphs 1. and 2. are applicable only to the extent that they do not conflict with any rules adopted by the department that are necessary to maintain a federally delegated or approved program.

(11) IMPLEMENTATION OF ADDITIONAL PROGRAMS.--

(a) The department shall not implement, without prior legislative approval, any additional regulatory authority pursuant to s. 303(d) of the Clean Water Act or 40 C.F.R. part 130, if such implementation would result in water quality discharge regulation of activities not currently subject to regulation.

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(b) Interim measures, best management practices, or other measures may be developed and voluntarily implemented pursuant to ~~paragraph~~ ~~subparagraphs~~ (7)(c)1. ~~and 2.~~ for any water body or segment for which a total maximum daily load or allocation has not been established. The implementation of such pollution control programs may be considered by the department in the determination made pursuant to subsection (4).

Section 13. Subsection (11) of section 482.211, Florida Statutes, is repealed.

Section 14. Austin Dewey Gay Agricultural Inspection Station designated; department to erect suitable markers.--

(1) The agricultural inspection station located at or near mile marker 1 on Interstate Highway 10 in Escambia County is designated as "Austin Dewey Gay Memorial Agricultural Inspection Station."

(2) The Department of Agriculture and Consumer Services is directed to erect suitable markers designating the Austin Dewey Gay Memorial Agricultural Inspection Station as described in subsection (1).

Section 15. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

An act relating to the Department of Agriculture and Consumer Services; amending s. 482.021, F.S.; revising the definitions of the terms "employee" and "independent contractor" for purposes of pest control regulation; amending s. 482.051, F.S.; revising certain requirements of the department to adopt rules relating to the use of pesticides for preventing subterranean termites in new

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393 construction; amending s. 482.091, F.S.; clarifying
394 provisions governing the performance of pest control
395 services; amending s. 482.156, F.S.; requiring
396 certification of individual commercial landscape
397 maintenance personnel; revising the types of materials
398 such personnel may use; removing obsolete provisions
399 relating to fees; clarifying requirements relating to
400 proof of education and insurance; amending s. 482.211,
401 F.S.; clarifying exemption of certain mosquito control
402 activities from regulation; amending s. 500.033, F.S.;
403 renaming the Florida Food Safety and Food Security
404 Advisory Council as the Florida Food Safety and Food
405 Defense Advisory Council and revising duties accordingly;
406 amending s. 500.12, F.S.; providing an exemption from food
407 inspections by the department; amending s. 582.06, F.S.;
408 revising the membership of the Soil and Water Conservation
409 Council; amending s. 810.09, F.S.; providing a felony
410 charge for trespassing on an agricultural chemicals
411 manufacturing facility; amending s. 810.011, F.S.;
412 providing a definition; amending s. 828.30, F.S.; updating
413 references to the Rabies Vaccination Certificate; amending
414 s. 403.067, F.S.; clarifying rules adopted by the
415 department relating to best-management practices;
416 clarifying the authority for certain measures to be
417 implemented by the Department of Environmental Protection
418 for certain water bodies; repealing s. 482.211(11), F.S.,
419 relating to an exemption from ch. 482, F.S., provided for
420 a yard worker when applying a pesticide to the lawn or
421 ornamental plants of an individual residential property
422 owner under certain circumstances; designating the "Austin

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423 Dewey Gay Agricultural Inspection Station" in Escambia
424 County; providing an effective date.
425

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1039 CS
SPONSOR(S): Garcia and others
TIED BILLS:

Miami-Dade County Lake Belt Area

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Water & Natural Resources Committee</u>	<u>8 Y, 0 N</u>	<u>Winker</u>	<u>Lotspeich</u>
2) <u>Finance & Tax Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Monroe</u>	<u>Diez-Arguelles</u>
3) <u>Agriculture & Environment Appropriations Committee</u>	<u></u>	<u>Dixon</u> <i>LD</i>	<u>Dixon</u> <i>LD</i>
4) <u>State Resources Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill makes the following changes to the Miami-Dade County Lake Belt Area (Lake Belt Area):

- Changes the boundary of the Lake Belt Area by including certain sections of the area which were previously excluded.
- Increases the mitigation fee that is imposed for each ton of limerock and sand that is sold from the area from its current seven cents per ton to 12 cents per ton beginning January 1, 2007, 18 cents per ton beginning January 1, 2008, and 24 cents per ton beginning January 1, 2009.
- Revises the date from January 1, 2001, to January 1, 2010, on which the mitigation fee will be increased by 2.1 percentage points (plus a cost growth index) pursuant to current law.
- Adds funding sources (South Florida Water Management District and Miami-Dade County) that may be reimbursed with proceeds of the mitigation fee.

The bill will have a positive fiscal impact on the revenue deposited into the Lake Belt Mitigation Trust Fund from approximately \$3 million in 2005 to \$10 million in 2009, due to three annual increases in the mitigation fee.

The bill will take effect January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – The bill increases the mitigation fee for the mining industry in the Lake Belt Area.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Miami-Dade Lake Belt Area comprises 77.5 square miles of environmentally sensitive land located in the western edge of the Miami-Dade County urban area. This area consists of wetlands and lakes which act potentially as a buffer between the Everglades and the encroachment of urban development. The area is also used for mining limestone and sand, with rock mined from the area supplying about one-half of all the limestone used in Florida. The Northwest Wellfield, which is located at the eastern edge of the area, is the largest drinking water wellfield in the state and supplies about 40 percent of the potable drinking water for Miami-Dade County. About 50% of the land within the Lake Area is owned by the mining industry, 25% is owned by government agencies, and 25% is owned by non-mining private owners.

Section 373.4139, F.S., established the Lake Belt Committee for the purpose of developing a long-term plan for the Lake Belt Area. In February 1997, and February 2001, this committee submitted reports to the Legislature with findings, recommendations, and a plan for the Lake Belt Area.

Based on these findings and recommendations, s. 373.4149, F.S., was enacted which adopted the plan intended to enhance the water supply for Miami-Dade County and the Everglades, including the development of wellfield protection measures, while maximizing the efficient recovery of limestone, promoting the social and economic welfare of the community, and protecting the environment.

A major recommendation from the Lake Belt Committee was that in order to offset the impacts of rock mining in the Lake Belt Area, this activity needed to be offset by the implementation of a mitigation plan.

Section 373.41492, F.S., enacted the mitigation plan by requiring the assessment of a per-ton mitigation fee assessed on limestone and sand sold from the Lake Belt Area. Fees collected from such sales are to be used for acquiring environmentally sensitive lands and for restoration, maintenance, and other environmental purposes.

Section 373.41492(2), F.S., provides that, effective October 1, 1999, 5 cents for each ton of limerock and sand sold from within the Lake Belt Area will be assessed. The limerock or sand miner who sells the limerock or sand is required to collect the mitigation fee and send the fee to the Department of Revenue (DOR). Proceeds of the fee, less administrative costs for the DOR, are then transferred to the South Florida Water Management District and deposited into the Lake Belt Mitigation Trust Fund created under s. 373.41495, F.S.

Section 373.41492(5), F.S., provides that effective January 1, 2001, and each January 1 thereafter, the per-ton mitigation fee must be increased by 2.1 percentage points, plus a cost growth index. Based upon this rate schedule, the mitigation fee for 2005 was 7 cents per ton.

All proceeds from the mitigation fee are to be used for mitigation activities that offset the loss of the value and functions of wetlands as a result of mining activities in the Lake Belt Area. Mitigation activities include the following:

- The purchase, enhancement, restoration, and management of wetlands and uplands.
- The purchase of mitigation credit from a permitted mitigation bank pursuant to s. 373.4136, F.S.
- Structural modifications to the existing drainage system to enhance the hydrology of the Lake Belt Area.
- Reimbursement to other funding sources, including the Save Our Rivers Land Acquisition Program and the Internal Improvement Trust Fund, for the purchase of lands acquired in areas appropriate for mitigation due to rock mining and to reimburse governmental agencies that exchanged land for mitigation due to rock mining.

Section 373.41492(6)(b), F.S., creates a Lake Belt Area mitigation fee interagency committee consisting of representatives from the Miami-Dade County Department of Environmental Resource Management, the Department of Environmental Protection, the South Florida Water Management District, and the Fish and Wildlife Conservation Commission. A representative of the limerock mining industry is a non-voting member of the committee. The interagency committee is required to submit a report to the Legislature with recommendations for any needed adjustments to the mitigation fee (s. 373.41492(8), F.S.).

Effect of Proposed Changes

The bill makes the following changes to the Miami-Dade County Lake Belt Area (Lake Belt Area):

- Changes the boundary of the Lake Belt Area by including certain sections of the area which were previously excluded.
- Increases the mitigation fee that is imposed for each ton of limerock and sand that is sold from the area from its current seven cents per ton to 12 cents per ton beginning January 1, 2007, 18 cents per ton beginning January 1, 2008, and 24 cents per ton beginning January 1, 2009.
- Revises the date from January 1, 2001 to January 1, 2010, on which the mitigation fee will be increased by 2.1 percentage points (plus a cost growth index) pursuant to current law.
- Adds funding sources (South Florida Water Management District and Miami-Dade County) that may be reimbursed with proceeds from the mitigation fee.

The bill will take effect January 1, 2007.

C. SECTION DIRECTORY:

Section 1: Amends s. 373.4149, F.S., changes the boundaries of the Lake Belt Area.

Section 2: Amends s. 373.41492, F.S., increases the mitigation fee for each ton of limerock and sand sold in the Lake Belt Area.

Section 3: The bill takes effect on January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

According to the South Florida Water Management District, approximately \$3 million in fee revenues from about 43 million tons of limerock and sand mined were deposited into the Lake Belt Mitigation Trust Fund in 2005.

Under the new mitigation fee rates provided for in the bill, an estimated \$5.2 million in fee revenues would be deposited in the trust fund at the 12 cents level (effective January 1, 2007); \$7.8 million effective January 1, 2008, and \$10.3 million effective January 1, 2009. Effective January 1, 2010 and each January 1 thereafter, the mitigation fee will increase by 2.1%, plus a cost growth index which will further increase the fee revenues deposited in the trust fund.

These increases in the mitigation fees should increase revenues to local governments for mitigation activities expenses.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The increased mitigation fees will have a negative fiscal impact upon the mining industry in the Lake Belt Area.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that counties and municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 31, 2006, the Committee on Finance and Tax adopted two amendments to this bill. The first amendment changed the dates of adjustments to the mitigation rate from October 1 to January 1. The second amendment changed the effective date from October 1, 2006 to January 1, 2007. These changes were suggested by the Department of Revenue due to technical difficulties with the October 1 date.¹

¹ In their analysis of this bill, the Department of Revenue wrote: "The . . . requirement to calculate the adjustments to the mitigation fee based upon specific indexes from the United States Department of Labor for the 12 month period ending September 30 of each year and an adjusted mitigation fee effective October 1 of the same year can not be done. Indexes such as the Consumer Price Index are published as much as three or more months following the reported month. Index information for September of a given year is not available until sometime in December of that year, at the earliest." The Department went on to recommend that the rate changes be made effective on January 1, three months later than the bill had the rate changes occurring. For similar reasons, the Department also asked for the bills effective date to be moved to January 1, 2007

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CHAMBER ACTION

The Finance & Tax Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Miami-Dade County Lake Belt Area; amending s. 373.4149, F.S.; revising the geographic boundaries of the Miami-Dade County Lake Belt Area; amending s. 373.41492, F.S.; revising the geographic boundaries for mining areas subject to mitigation fees under the Miami-Dade County Lake Belt Mitigation Plan; providing for mitigation fee increases; authorizing proceeds of mitigation fees to be allocated to the South Florida Water Management District and Miami-Dade County for specific purposes; revising the reporting requirements for the interagency committee; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 373.4149, Florida Statutes, is amended to read:

373.4149 Miami-Dade County Lake Belt Plan.--

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(3) The Miami-Dade County Lake Belt Area is that area bounded by the Ronald Reagan Turnpike to the east, the Miami-Dade-Broward County line to the north, Krome Avenue to the west and Tamiami Trail to the south together with the land south of Tamiami Trail in sections 5, 6, 7, 8, 17, and 18, Township 54 South, Range 39 East, sections 24, 25, and 36, Township 54 South, Range 38 East, less those portions of section 3, Township 52 South, Range 39 East south of Krome Avenue and west of U.S. Highway 27, ~~section 10, except the west one half, section 11, except the northeast one quarter and the east one half of the northwest one quarter, and tracts 38 through 41, and tracts 49 through 64 inclusive, section 13, except tracts 17 through 35 and tracts 46 through 48, of Florida Fruit Lands Company~~ Subdivision No. 1 according to the plat thereof as recorded in plat book 2, page 17, public records of Miami-Dade County, and section 14, except the west three quarters, Township 52 South, Range 39 East, lying north of the Miami Canal, and less sections 35 and 36 and the east one-half of sections 24 and 25, Township 53 South, Range 39 East and Government Lots 1 and 2, lying between Townships 53 and 54 South, Range 39 East and those portions of sections 1 and 2, Township 54 South, Range 39 East, lying north of Tamiami Trail.

Section 2. Subsections (2), (5), and (7), paragraph (a) of subsection (6), and paragraph (b) of subsection (9) of section 373.41492, Florida Statutes, are amended to read:

373.41492 Miami-Dade County Lake Belt Mitigation Plan; mitigation for mining activities within the Miami-Dade County Lake Belt.--

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52 (2) To provide for the mitigation of wetland resources
53 lost to mining activities within the Miami-Dade County Lake Belt
54 Plan, effective October 1, 1999, a mitigation fee is imposed on
55 each ton of limerock and sand extracted by any person who
56 engages in the business of extracting limerock or sand from
57 within the Miami-Dade County Lake Belt Area ~~and sections 10, 11,~~
58 ~~13, 14, Township 52 South, Range 39 East,~~ and the east one-half
59 of sections 24 and, 25 and all of sections, 35, and 36, Township
60 53 South, Range 39 East. The mitigation fee is imposed at the
61 rate of 5 cents for each ton of limerock and sand sold from
62 within the properties where the fee applies in raw, processed,
63 or manufactured form, including, but not limited to, sized
64 aggregate, asphalt, cement, concrete, and other limerock and
65 concrete products. The mitigation fee imposed by this subsection
66 for each ton of limerock and sand sold shall be 12 cents per ton
67 beginning January 1, 2007, 18 cents per ton beginning January 1,
68 2008, and 24 cents per ton beginning January 1, 2009. Any
69 limerock or sand that is used within the mine from which the
70 limerock or sand is extracted is exempt from the fee. The amount
71 of the mitigation fee imposed under this section must be stated
72 separately on the invoice provided to the purchaser of the
73 limerock or sand product from the limerock or sand miner, or its
74 subsidiary or affiliate, for which the mitigation fee applies.
75 The limerock or sand miner, or its subsidiary or affiliate, who
76 sells the limerock or sand product shall collect the mitigation
77 fee and forward the proceeds of the fee to the Department of
78 Revenue on or before the 20th day of the month following the
79 calendar month in which the sale occurs.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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(5) Beginning January 1, 2010 ~~2001~~, and each January 1 thereafter, the per-ton mitigation fee shall be increased by 2.1 percentage points, plus a cost growth index. The cost growth index shall be the percentage change in the weighted average of the Employment Cost Index for All Civilian Workers (ecu 10001I), issued by the United States Department of Labor for the most recent 12-month period ending on September 30, and the percentage change in the Producer Price Index for All Commodities (WPU 00000000), issued by the United States Department of Labor for the most recent 12-month period ending on September 30, compared to the weighted average of these indices for the previous year. The weighted average shall be calculated as 0.6 times the percentage change in the Employment Cost Index for All Civilian Workers (ecu 10001I), plus 0.4 times the percentage change in the Producer Price Index for All Commodities (WPU 00000000). If either index is discontinued, it shall be replaced by its successor index, as identified by the United States Department of Labor.

(6)(a) The proceeds of the mitigation fee must be used to conduct mitigation activities that are appropriate to offset the loss of the value and functions of wetlands as a result of mining activities and must be used in a manner consistent with the recommendations contained in the reports submitted to the Legislature by the Miami-Dade County Lake Belt Plan Implementation Committee and adopted under s. 373.4149. Such mitigation may include the purchase, enhancement, restoration, and management of wetlands and uplands, the purchase of mitigation credit from a permitted mitigation bank, and any

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structural modifications to the existing drainage system to enhance the hydrology of the Miami-Dade County Lake Belt Area. Funds may also be used to reimburse other funding sources, including the Save Our Rivers Land Acquisition Program, and the Internal Improvement Trust Fund, the South Florida Water Management District, and Miami-Dade County, for the purchase of lands that were acquired in areas appropriate for mitigation due to rock mining and to reimburse governmental agencies that exchanged land under s. 373.4149 for mitigation due to rock mining ~~rockmining~~.

(7) Payment of the fee imposed by this section satisfies the mitigation requirements imposed under ss. 373.403-373.439 and any applicable county ordinance for loss of the value and functions from mining of the wetlands identified as rock mining ~~rockmining~~ supported and allowable areas of the Miami-Dade County Lake Plan adopted by s. 373.4149(1). In addition, it is the intent of the Legislature that the payment of the mitigation fee imposed by this section satisfy all federal mitigation requirements for the wetlands mined.

(9)

(b) No sooner than January 31, 2010, and no more frequently than every 5 ~~10~~ years thereafter, the interagency committee shall submit to the Legislature a report recommending any needed adjustments to the mitigation fee to ensure that the revenue generated reflects the actual costs of the mitigation.

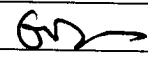
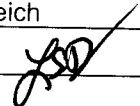
Section 3. This act shall take effect January 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1459 Regulated Reptiles

SPONSOR(S): Poppell and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Water & Natural Resources Committee</u>	<u>10 Y, 0 N</u>	<u>Winker</u>	<u>Lotspeich</u>
2) <u>Agriculture & Environment Appropriations Committee</u>	<u></u>	<u>Davis</u> 	<u>Dixon</u> 
3) <u>State Resources Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill requires the Fish and Wildlife Conservation Commission (FWCC) to establish a list of venomous, non-native, or other reptiles for which the possession, transportation, or exhibition is regulated. The FWCC is also required to adopt rules to implement the provisions of ss. 372.86 - 372.91, F.S., relating to regulated reptiles.

The bill replaces in ss. 372.86 – 372.92, F.S., the phrase “poisonous or venomous” with the term “regulated reptiles” to expand the category of reptiles for which a permit from FWCC is required to “keep, possess, or exhibit” to include non-poisonous and non-venomous reptiles.

The bill provides for an annual permit at a cost of \$100 per permit for persons who possess a non-poisonous regulated reptile.

The bill provides that the amount of bond required for exhibiting regulated reptiles is \$10,000, and changes the payee of the bond from the Governor to the FWCC.

The bill requires the FWCC to establish a reporting system for regulated reptiles and collect, at minimum, information on:

- The purchase or other acquisition of a regulated reptile;
- The possession of a regulated reptile;
- The sale, gift, or other transfer of a regulated reptile; and
- The death, destruction, or other disposition of a regulated reptile.

The bill subjects all regulated reptiles, including non-poisonous reptiles, to the same housing, transportation, inspection, and organized hunt requirements to which poisonous reptiles are subject under current law. The bill provides that any person who violates any provision of ss. 372.86 - 372.91, F.S., has committed a first degree misdemeanor. The bill also provides that any person who knowingly releases a regulated reptile to the wild or through gross negligence allows a regulated reptile to escape commits a third degree felony.

The FWCC estimates that the additional license fees will generate approximately \$300,000 per year and their costs associated with processing applications and providing additional inspections would also be approximately \$300,000 annually.

The bill takes effect on July 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1459b.AGEA.doc

DATE: 3/30/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – The bill provides for additional regulations for persons keeping, possessing, and exhibiting certain reptiles with the intention of minimizing the extent to which persons intentionally or accidentally release certain reptiles into the wild.

Ensure lower taxes – The bill requires persons possessing non-poisonous reptiles to obtain a permit at an annual cost of \$100.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Current Statutes

Section 372.86, F.S., provides that no person, firm, or corporation shall keep, possess, or exhibit any poisonous or venomous reptile without obtaining a special permit or license from the Fish and Wildlife Conservation Commission (FWCC). According to the FWCC, there have been a total of less than 500 permits issued. Currently, FWCC reports that there are over 300 entities licensed to possess poisonous or venomous reptiles.

Section 372.87, F.S., authorizes the FWCC to issue a license or permit for the keeping, possessing, or exhibiting of poisonous or venomous reptiles. The FWCC is authorized to assess an annual fee of \$100 for the permit, which may be renewed on an annual basis upon the payment of the fee. The FWCC may revoke the permit for any violation of provisions in ss. 372.86 – 372.91, F.S., or any rule pertaining to such sections.

Section 372.88, F.S., requires that before a person, party, firm, or corporation can exhibit poisonous or venomous reptiles to the public, a "good and sufficient" bond in writing in the sum of \$1,000 must be provided and payable to the Governor and the Governor's successors. The bond must be conditioned that the exhibitor will indemnify and save harmless all persons from injury or damage from the poisonous or venomous reptiles. The aggregate liability of the surety shall not exceed the sum of the bond amount.

Section 372.89, F.S., requires that any person, firm, or corporation licensed to keep, possess, or exhibit poisonous or venomous reptiles must provide safe, secure, and proper housing for the reptiles in cases, cages, pits, or enclosures. This section also makes it unlawful to keep, possess, or exhibit a poisonous or venomous reptile in any manner not approved as safe, secure, or proper by the FWCC.

Section 372.90, F.S., requires that poisonous or venomous reptiles may only be transported in a "stout closely woven cloth sack, tied or otherwise secured", placed in a box made of "solid material in solid sheets" with air holes which must be screened. The boxes used for transportation of poisonous reptiles must be prominently labeled "Danger---Poisonous Snakes" or "Danger---Poisonous Reptiles."

Section 372.901, F.S., provides that poisonous or venomous reptiles held in captivity must be subject to an inspection by an officer of the FWCC, who shall determine that the reptiles are securely, properly, and safely penned. If not, the FWCC officer must report the situation to the person or firm owning the reptiles. Should the person or firm fail to correct the situation within 30 days after receiving the written notice, the license or permit required to keep, possess, or exhibit the reptiles shall be revoked.

Section 372.91, F.S., provides that no person other than the person issued the license or permit to keep, possess, or exhibit the poisonous or venomous reptiles, or the person's authorized employee, may open any cage, pit, or other container holding the reptiles.

Section 372.912, F.S., provides that any person, firm, or corporation wanting to conduct an organized poisonous reptile hunt must comply with the provisions and requirements of ss. 372.86 - 372.91, F.S., and the event must be registered with the FWCC. If the event is conducted by a nonprofit organization registered with the Department of State, the licensing provisions in ss. 372.86, 372.87, and 372.88, F.S., are not required.

Section 372.265, F.S., provides that it is unlawful for sale or use, or to release within this state, "any species of the animal kingdom not indigenous to Florida without first obtaining a permit to do so" from the FWCC. The FWCC is authorized to issue or deny such a permit "upon the completion of studies of the species made by it (FWCC) to determine any detrimental effect the species might have on the ecology of the state." Persons in violation of this section can be found guilty of a first degree misdemeanor punishable pursuant to s. 775.145 or s. 775.083, F.S.

Captive Wildlife Technical Advisory Group

The Captive Wildlife Technical Advisory Group (CWTAG) was originally formed in 1994 for the purpose of reviewing Florida's exotic animal regulations. After several years of work, this group was abandoned and on July 15, 2005, the CWTAG was re-constituted. The CWTAG is comprised of 11 members and according to the FWCC, "represents all facets of the captive wildlife industry and wildlife rehabilitation." Members of the CWTAG also "represent experience in animal welfare, disease/bioterrorism, emergency response, and local government."

Although the CWTAG has a broad mission, a primary issue discussed at CWTAG meetings (six public meetings since July 2005) focused on the regulation of venomous and poisonous reptiles. For example, at the October meeting, the CWTAG discussed the permitting of persons owning such reptiles as well as means to identify and track venomous reptiles.

The CWTAG also discussed the need for defining "venomous reptiles" and that the term "venomous" is not currently defined in statute or in FWCC regulations. FWCC staff reported to the CWTAG that a number of issues have arisen in attempting to define "venomous reptiles." For example, what is the threshold where the venomous reptile regulations apply? Should the FWCC consider the toxicity of the venom, the behavior of the reptile/snake, or whether or not the reptile/snake is rear-fanged? What about the issue of "venom-void" reptiles, which are reptiles which have been surgically altered to remove venom glands or alter the reptile's venom delivery system?

At its September meeting, the CWTAG was provided a presentation on the National Reptile Improvement Plan (discussed below) along with a discussion on penalties for violations of the state's requirements for keeping, possessing, and exhibiting venomous reptiles.

At its December meeting, the CWTAG again discussed the need for a definition of "venomous reptiles." The CWTAG also held a discussion on "giant reptiles" (e. g., Burmese/Indian python, Amethystine python, Reticulated python, African Rock python, and the Anaconda). The CWTAG discussed proposed legislation (HB 1459) regarding the regulation of reptiles.

Also at its December meeting, the CWTAG made the following recommendations to the FWCC:

- That a new FWCC rule be adopted requiring a permanent identification marker be attached to each venomous reptile cage.
- As a condition of the issuance of a venomous reptile permit, the applicant must prepare and file a disaster and emergency plan with the FWCC.

- Each venomous reptile permit holder must be required to post on site, a “venomous bite protocol,” listing actions to be taken in the event of a reptile bite.
- In the short term, “venomous reptiles” should be defined by FWCC rule to include all animals in the families Elapidae, Crotalidae, Viperidae, and Hydrophilidae; all animals in the Genus Heloderma; all animals in the following Colubridae Genera – Rhabdophis, Dispholidus, Thelatornis, and Atracapsis, in addition to any reptile species determined to have the potential to cause serious human injury due to toxic effects of its venom or poison.
- In the long term, the term “venomous reptiles” should be changed to “reptiles subject to regulation.”

National Reptile Improvement Plan

Adopted by the Pet Industry Joint Advisory Council (PIJAC) in June 2003, the National Reptile Improvement Plan: Best Management Practices for the Reptile Trade (NRIP), provides standards and best practices designed to improve the practices of persons involved in the importation, sale, or captive breeding of reptilian and amphibian species.

The intent of the NRIP is to establish practices and standards designed to minimize the risk of international and interstate movement of reptiles causing harm to the reptiles, livestock, or the environment. Participation in the NRIP is voluntary, and is a self-regulated program that includes the adoption and implementation of best management practices, a quality assurance program, and independent verification of compliance through periodic inspections.

NRIP best management practices were developed through a consultative process with participation by representatives of the reptile industry, the reptile hobby community, reptile veterinarians, entomologists and the U.S. Department of Agriculture and the Florida Department of Agriculture and Consumer Services.

The NRIP defines “reptile” as any living specimens of the following taxonomic groups belonging to the class Reptilia:

- Snakes;
- Lizards;
- Turtles and Tortoises; and
- Crocodilians.

The NRIP defines the term “venomous animal” to mean any snake of the following type:

- Cobras, mambas, coral snakes, kraits, and relatives;
- Adders and vipers;
- Rattlesnakes, copperheads, and palm pit vipers;
- Mole vipers and burrowing asps;
- Sea snakes;
- Rear-fanged snakes;
- African vine or twig snakes;
- Mangrove and cat snakes; and
- Any lizard of the genus Heloderma.

The NRIP provides numerous and detailed standards and best management practices for the reptile trade. For example, under the section entitled Display and Sale at Public Events, some of the best management practices include:

- No venomous animal, including rear-fanged animal, should be sold to anyone under the age of 18 years of age.

- Sales of venomous animals should be in a separate room or location within the event site.
- All reptiles and amphibians that can cause harm should be kept in a secure container at all times.

As discussed above, the CWTAG has discussed the NRIP and has recommended that the FWCC adopt its standards and best management practices.

Effect of Proposed Changes

The bill requires the Fish and Wildlife Conservation Commission (FWCC) to establish a list of venomous, non-native, or other reptiles for which the possession, transportation, or exhibition is regulated. The FWCC is also required to adopt rules to implement the provisions of ss. 372.86 - 372.91, F.S., related to regulated reptiles.

The bill replaces in ss. 372.86 – 372.92, F.S., the phrase “poisonous or venomous” with the term “regulated” reptiles to expand the category of reptiles for which a permit from the FWCC is required to keep, possess, or exhibit to include non-poisonous and non-venomous reptiles.

The bill provides for an annual permit at a cost of \$100 per permit for persons who possess a non-poisonous regulated reptile.

The bill increases the amount of bond required for exhibiting regulated reptiles from \$1,000 to \$10,000 and changes the payee of the bond from the Governor to the FWCC.

The bill requires the FWCC to establish a reporting system for regulated reptiles, and collect, at minimum, information on:

- The purchase or other acquisition of a regulated reptile;
- The possession of a regulated reptile;
- The sale, gift, or other transfer of a regulated reptile; and
- The death, destruction, or other disposition of a regulated reptile.

The bill subjects all regulated reptiles, including non-poisonous reptiles, to the same housing, transportation, inspection, and organized hunt requirements to which poisonous reptiles are subject under current law (ss. 372.86 - 372.912, F.S.).

The bill provides that any person who violates any provision of ss. 372.86 - 372.91, F.S., has committed a first degree misdemeanor. The bill also provides that any person who knowingly releases a regulated reptile to the wild or through gross negligence allows a regulated reptile to escape commits a third degree felony.

The bill takes effect on July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 372.86, F.S., to require the FWCC to establish a list of reptiles for which the possession, transportation, or exhibition is regulated.

Section 2: Amends s. 372.87, F.S., to delete the terms “poisonous” and “venomous” before “reptiles” and replaces these terms with the term “regulated.”

Section 3: Amends s. 372.88, F.S., to revise the bond amount and payee required for persons exhibiting regulated reptiles.

- Section 4: Amends s. 372.89, F.S., to delete the terms "poisonous" and "venomous" before "reptiles" and replaces these terms with the term "regulated."
- Section 5: Amends s. 372.90, F.S., to require that regulated reptiles be transported in a specified manner.
- Section 6: Amends s. 372.901, F.S., to require the FWCC to establish by rule a reporting system for regulated reptiles.
- Section 7: Amends s. 372.91, F.S., to delete the terms "poisonous" and "venomous" before "reptiles" and replaces these terms with the term "regulated."
- Section 8: Renumbers s. 372.911, F.S., as s. 372.0715, F.S.
- Section 9: Renumbers and amends s. 372.912, F.S., as s. 372.902, F.S., deletes the terms "poisonous" and "venomous" before "reptiles" and replaces these terms with the term "regulated."
- Section 10: Amends s. 372.92, F.S., establishes penalties for violating requirements for regulating reptiles.
- Section 11: The bill takes effect on July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:	FY 06-07	FY 07-08	FY 08-09
State Game Trust Fund (est. 3,000 additional entities requiring \$100 license)	<u>Amount</u>	<u>Amount</u>	<u>Amount</u>
	\$300,000	\$300,000	\$300,000
2. Expenditures:			
Workload-personnel (2 FTE) (salaries/expenses etc.)	\$91,276	\$83,713	\$85,526
Operations/Expenses (application review, inspections)	<u>\$208,274</u> \$300,000	<u>\$216,287</u> \$300,000	<u>\$214,474</u> \$300,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Entities exhibiting regulated reptiles will have to secure a bond in the amount of \$10,000. This amounts to an increase of \$9,000 from the \$1,000 for those currently exhibiting poisonous and venomous

reptiles under current law. Entities currently exhibiting non-poisonous reptiles currently have no bond requirement. The bill will impose a \$10,000 bond requirement on them. Entities possessing non-poisonous regulated reptiles will now be required to have the same annual permit, at a cost of \$100 per permit, as those entities possessing poisonous or venomous reptiles.

D. FISCAL COMMENTS:

The FWCC estimates that new license fees will generate approximately \$300,000 and their expenditures associated with reviewing/processing applications and increased inspections would also equal \$300,000. The bill will also have an indeterminate fiscal impact upon the FWCC for the implementation of a regulated reptile reporting system.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds. Nor does the bill reduce the authority that cities and counties have to raise revenues in the aggregate or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Pursuant to Article IV, Section 9 of the Florida Constitution, the FWCC has the authority to exercise the regulatory and executive powers of the state with respect to fresh water aquatic life, marine life, and wild animal life. However, this Constitutional provision requires that "all license fees for taking wild animal life, fresh water aquatic life and marine life and penalties for violating regulations of the commission shall be prescribed by general law." The fees and penalties provided by the bill appear to be consistent with this constitutional requirement.

B. RULE-MAKING AUTHORITY:

The bill requires the FWCC to amend current rules related to the possession, keeping, and exhibiting of poisonous and venomous reptiles to expand the list of regulated reptiles to include non-poisonous reptiles. The bill also requires FWCC to adopt rules for implementing a regulated reptile reporting system.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates penalties for persons who knowingly release a regulated reptile to the "wild" or who through "gross negligence" allow a regulated reptile to escape. The bill does not define the terms "wild" and "gross negligence," which could lead to vague and discretionary interpretations for FWCC enforcement officers.

The following comments were provided by staff at the FWCC.

The bill provides for enhanced regulations for the possessing and exhibiting of certain reptiles as determined by the FWCC. These enhanced regulations are needed for the following reasons:

- The safety and health of the public, native wildlife, and the environment.
- The effort to prevent all introductions of exotic species and developing regulations to address the more problematic species.
- The establishment of several species of non-native reptiles which now threaten native species and their habitats.
- The great size and/or potential environmental harm of such reptiles if released into the wild.

The penalties created by the bill are inconsistent with penalties for similar offenses. A person who violates any provision or FWCC rule of ss. 372.86 – 372.91, F.S., commits a first degree misdemeanor. These violations are similar to those applying to the exhibition, possession, and safe housing of other types of captive wildlife, which are second degree misdemeanors. A person who knowingly releases a regulated reptile to the wild or who through gross negligence results in a regulated reptile to escape commits a third degree felony. These violations are similar to violations related to the release of any freshwater fish species not indigenous to the state, which are first degree misdemeanors.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

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A bill to be entitled

An act relating to regulated reptiles; amending s. 372.86, F.S.; requiring the Fish and Wildlife Conservation Commission to establish a list of reptiles subject to regulation; authorizing the commission to adopt rules; amending s. 372.87, F.S.; requiring licensure for the keeping, possessing, or exhibiting of regulated reptiles; amending s. 372.88, F.S.; increasing the required bond amount for the exhibition of regulated reptiles; requiring such bonds to be payable to the commission; amending s. 372.89, F.S.; requiring safe, secure, and proper housing of regulated reptiles; amending s. 372.90, F.S.; providing for the transportation of regulated reptiles; amending s. 372.901, F.S.; providing for the inspection of regulated reptiles; requiring the commission to establish a reporting system for certain activities related to regulated reptiles; amending s. 372.91, F.S.; authorizing certain persons to open regulated reptile cages; renumbering s. 372.911, F.S., relating to rewards, to conform; renumbering and amending s. 372.912, F.S., relating to organized regulated reptile hunts; amending s. 372.92, F.S.; providing criminal penalties for certain activities related to regulated reptiles; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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Section 1. Section 372.86, Florida Statutes, is amended to read:

372.86 Possessing ~~or~~ exhibiting regulated ~~poisonous or venomous~~ reptile; license required.--

(1) The Fish and Wildlife Conservation Commission shall establish a list of venomous, nonnative, or other reptiles for which the possession, transportation, or exhibition is regulated. The commission is authorized to adopt rules pursuant to chapter 120 to implement the provisions of ss. 372.86-372.91.

(2) No person, firm, or corporation shall keep, possess, or exhibit any regulated ~~poisonous or venomous~~ reptile without first having obtained a special permit or license therefor from the Fish and Wildlife Conservation Commission as herein provided.

Section 2. Section 372.87, Florida Statutes, is amended to read:

372.87 License fee; renewal, revocation.--The Fish and Wildlife Conservation Commission is hereby authorized and empowered to issue a license or permit for the keeping, possessing, or exhibiting of regulated ~~poisonous or venomous~~ reptiles, upon payment of an annual fee of \$100 and upon assurance that all of the provisions of ss. 372.86-372.91 and such other reasonable rules and regulations as said commission may prescribe will be fully complied with in all respects. Such permit may be revoked by the Fish and Wildlife Conservation Commission upon violation of any of the provisions of ss. 372.86-372.91 or upon violation of any of the rules and regulations prescribed by said commission relating to the

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56 keeping, possessing, and exhibiting of any regulated ~~poisonous~~
57 ~~and venomous~~ reptiles. Such permits or licenses shall be for an
58 annual period to be prescribed by the said commission and shall
59 be renewable from year to year upon the payment of said fee and
60 shall be subject to the same conditions, limitations, and
61 restrictions as herein set forth.

62 Section 3. Section 372.88, Florida Statutes, is amended to
63 read:

64 372.88 Bond required, amount.--No person, party, firm, or
65 corporation shall exhibit to the public either with or without
66 charge, or admission fee any regulated ~~poisonous or venomous~~
67 reptile without having first posted a good and sufficient bond
68 in writing in the penal sum of \$10,000 ~~\$1,000~~ payable to the
69 Fish and Wildlife Conservation Commission ~~Governor of the state,~~
70 ~~and the Governor's successors in office~~, conditioned that such
71 exhibitor will indemnify and save harmless all persons from
72 injury or damage from such regulated ~~poisonous or venomous~~
73 reptiles so exhibited and shall fully comply with all laws of
74 the state and all rules and regulations of the ~~Fish and Wildlife~~
75 ~~Conservation~~ commission governing the keeping, possessing, or
76 exhibiting of regulated ~~poisonous or venomous~~ reptiles;
77 provided, however, that the aggregate liability of the surety
78 for all such injuries or damages shall, in no event, exceed the
79 penal sum of said bond. The surety for said bond must be a
80 surety company authorized to do business under the laws of the
81 state or in lieu of such a surety, cash in the sum of \$10,000
82 ~~\$1,000~~ may be posted with the said commission to ensure
83 compliance with the conditions of said bond.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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Section 4. Section 372.89, Florida Statutes, is amended to read:

372.89 Safe housing required.--All persons, firms, or corporations licensed under this law to keep, possess, or exhibit regulated ~~poisonous or venomous~~ reptiles shall provide safe, secure, and proper housing for said reptiles in cases, cages, pits, or enclosures. It shall be unlawful for any person, firm, or corporation, whether licensed hereunder or not, to keep, possess, or exhibit any regulated ~~poisonous or venomous~~ reptiles in any manner not approved as safe, secure, and proper by the Fish and Wildlife Conservation Commission.

Section 5. Section 372.90, Florida Statutes, is amended to read:

372.90 Transportation.--Regulated ~~Poisonous or venomous~~ reptiles may be transported only in the following fashion: The reptile, or reptiles shall be placed in a stout closely woven cloth sack, tied or otherwise secured. This sack shall then be placed in a box. The box shall be of strong material in solid sheets, except for small air holes, which holes shall be screened. Boxes containing ~~poisonous or venomous snakes or other~~ reptiles shall be prominently labeled "~~Danger--Poisonous Snakes~~" or "Danger--Poisonous Reptiles."

Section 6. Section 372.901, Florida Statutes, is amended to read:

372.901 Inspection and reporting.--

(1) Regulated ~~Poisonous or venomous~~ reptiles, held in captivity, shall be subject to inspection by an inspecting officer from the Fish and Wildlife Conservation Commission. The

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inspecting officer shall determine whether the said reptiles are securely, properly, and safely penned. In the event that the reptiles are not safely penned, the inspecting officer shall report the situation in writing to the person or firm owning the said reptiles. Failure of the owner or exhibitor to correct the situation within 30 days after such written notice shall be grounds for revocation of the license or permit of said owner or exhibitor.

(2) The commission shall establish by rule a reporting system for regulated reptiles. Such reports may include, but are not limited to, information regarding:

(a) The purchase or other acquisition of a regulated reptile.

(b) The possession of a regulated reptile.

(c) The sale, gift, or other transfer of a regulated reptile.

(d) The death, destruction, or other disposition of a regulated reptile.

Section 7. Section 372.91, Florida Statutes, is amended to read:

372.91 Who may open cages, pits, or other containers housing regulated ~~poisonous or venomous~~ reptiles.--No person except the licensee or her or his authorized employee shall open any cage, pit, or other container which contains regulated ~~poisonous or venomous~~ reptiles.

Section 8. Section 372.911, Florida Statutes, is renumbered as section 372.0715, Florida Statutes.

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Section 9. Section 372.912, Florida Statutes, is renumbered as section 372.902, Florida Statutes, and amended to read:

372.902 ~~372.912~~ Organized regulated ~~poisonous~~ reptile hunts.--

(1) All persons, firms, and corporations sponsoring and conducting any organized regulated ~~poisonous~~ reptile hunt for whatever purpose shall comply with the provisions of ss. 372.86-372.91.

(2) All persons participating in any organized regulated ~~poisonous~~ reptile hunt in the state which is sponsored and conducted by a nonprofit organization registered with the Department of State under the provisions of chapter 617 shall be exempt from the licensing provisions contained in ss. 372.86, 372.87, and 372.88, only for the duration of said organized hunt.

(3) All organized regulated ~~poisonous~~ reptile hunts in the state shall be registered with the Fish and Wildlife Conservation Commission and be subject to reasonable rules and regulations promulgated by said commission.

Section 10. Section 372.92, Florida Statutes, is amended to read:

372.92 Rules and regulations; penalties.--

(1) The Fish and Wildlife Conservation Commission may prescribe such other rules and regulations as it may deem necessary to prevent the escape of regulated ~~poisonous and venomous~~ reptiles, either in connection of construction of such cages or otherwise to carry out the intent of ss. 372.86-372.91.

HB 1459

2006

167 (2) Any person who violates a provision of ss. 372.86-
 168 372.91 or any rule or regulation established under ss. 372.86-
 169 372.91 commits a misdemeanor of the first degree, punishable as
 170 provided in s. 775.082 or s. 775.083.

171 (3) Any person who knowingly releases a regulated reptile
 172 to the wild or who through gross negligence allows a regulated
 173 reptile to escape commits a felony of the third degree,
 174 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

175 Section 11. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 1459

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Agriculture & Environment
Appropriations
Representative Poppell offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 372.86, Florida Statutes, is amended to read:

372.86 Possessing, exhibiting reptiles of concern
~~poisonous or venomous reptile~~; license required. -

(1) The Fish and Wildlife Conservation Commission shall promulgate a list of reptiles of concern including venomous, non-venomous, native, nonnative, or other reptiles for which the capture, possession, transportation, or exhibition is regulated. The commission is authorized to adopt rules pursuant to chapter 120 to implement the provisions of ss. 372.86-372.91.

(2) No person, firm, or corporation shall capture, keep, possess, or exhibit any ~~poisonous or venomous~~ reptile of concern without first having obtained a special permit or license

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therefor from the Fish and Wildlife Conservation Commission as herein provided.

Section 2. Section 372.87, Florida Statutes, is amended to read:

372.87 License fee; renewal, revocation. - The Fish and Wildlife Conservation Commission is hereby authorized and empowered to issue a license or permit for the capturing, keeping, possessing, or exhibiting of reptiles of concern ~~poisonous or venomous reptiles~~, upon payment of an annual fee of \$100 and upon assurance that all of the provisions of ss. 372.86-372.91 and such other reasonable rules and regulations as said commission may prescribe will be fully complied with in all respects. Such permit may be revoked by the Fish and Wildlife Conservation Commission upon violation of any of the provisions of ss. 372.86-372.91 or upon violation of any of the rules and regulations prescribed by said commission relating to the keeping, possessing, and exhibiting of any reptile of concern ~~poisonous and venomous reptiles~~. Such permits or licenses shall be for an annual period to be prescribed by the said commission and shall be renewable from year to year upon the payment of said fee and shall be subject to the same conditions, limitations, and restrictions as herein set forth. All monies received pursuant to this section shall be deposited into the State Game Trust Fund to be used to implement, administer, and enforce, and educate the public regarding ss. 372.86-372.91.

Section 3. Section 372.88, Florida Statutes, is amended to read:

372.88 Bond required, amount. - No person, party, firm, or corporation shall exhibit to the public either with or without charge, or admission fee any ~~poisonous or venomous~~ reptile of

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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51 concern which is venomous without having first posted a good and
52 sufficient bond in writing in the penal sum of \$1,000 payable to
53 the commission ~~Governor of the state, and the Governor's~~
54 ~~successors in office~~, conditioned that such exhibitor will
55 indemnify and save harmless all persons from injury or damage
56 from such reptiles of concern which are venomous ~~poisonous or~~
57 ~~venomous reptiles~~ so exhibited and shall fully comply with all
58 laws of the state and all rules and regulations of the Fish and
59 Wildlife Conservation Commission governing the capturing,
60 keeping, possessing, or exhibiting of reptiles of concern which
61 are venomous ~~poisonous or venomous reptiles~~; provided, however,
62 that the aggregate liability of the surety for all such injuries
63 or damages shall, in no event, exceed the penal sum of said
64 bond. The surety for said bond must be a surety company
65 authorized to do business under the laws of the state or in lieu
66 of such a surety, cash in the sum of \$1,000 may be posted with
67 the said commission to ensure compliance with the conditions of
68 said bond.

69 Section 4. Section 372.89, Florida Statutes, is amended to
70 read:

71 372.89 Safe housing required. - All persons, firms, or
72 corporations licensed under this law to capture, keep, possess,
73 or exhibit any reptile of concern ~~poisonous or venomous reptiles~~
74 shall provide safe, secure, and proper housing for said reptiles
75 in cases, cages, pits, or enclosures. It shall be unlawful for
76 any person, firm, or corporation, whether licensed hereunder or
77 not, to capture, keep, possess, or exhibit any reptile of
78 concern ~~poisonous or venomous reptiles~~ in any manner not
79 approved as safe, secure, and proper by the Fish and Wildlife
80 Conservation Commission.

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81 Section 5. Section 372.90, Florida Statutes, is amended to
82 read:

83 372.90 Transportation. - Reptiles of concern which are
84 venomous ~~Poisonous or venomous reptiles~~ may be transported only
85 in the following fashion: The reptile, or reptiles shall be
86 placed in a stout closely woven cloth sack, tied or otherwise
87 secured. This sack shall then be placed in a box. The box shall
88 be of strong material in solid sheets, except for small air
89 holes, which holes shall be screened. Boxes containing ~~poisonous~~
90 ~~or venomous snakes or other~~ reptiles shall be prominently
91 labeled "~~Danger-Poisonous Snakes~~" or "~~Danger-Venomous~~ Poisonous
92 Reptiles." The commission shall establish by rule the
93 transporting requirements for reptiles of concern.

94 Section 6. Section 372.901, Florida Statutes, is amended
95 to read:

96 372.901 Inspection. -

97 (1) Reptiles of concern ~~Poisonous or venomous reptiles~~,
98 held in captivity, are ~~shall be~~ subject to inspection by an
99 inspecting officer from the Fish and Wildlife Conservation
100 Commission. The inspecting officer shall determine whether the
101 said reptiles are securely, properly, and safely penned. In the
102 event that the reptiles are not safely penned, the inspecting
103 officer shall report the situation in writing to the person or
104 firm owning the said reptiles. Failure of the owner or exhibitor
105 to correct the situation within 30 days after such written
106 notice shall be grounds for revocation of the license or permit
107 of said owner or exhibitor.

108 (2) The commission shall establish by rule a reporting
109 system for reptiles of concern. Reports required pursuant to
110 said reporting system may include but are not limited to:

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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capture, purchase, or other acquisition; possession; sale, gift,
or other transfer; death, destruction, or other disposition.

Section 7. Section 372.91, Florida Statutes, is amended to read:

372.91 Who may open cages, pits, or other containers housing reptiles of concern which are venomous ~~poisonous or venomous reptiles~~. - No person except the licensee or her or his authorized employee shall open any cage, pit, or other container which contains ~~poisonous or~~ venomous reptiles.

Section 8. Section 372.911, Florida Statutes, is renumbered as s. 372.0715.

Section 9. Section 372.912, Florida Statutes, is repealed.

Section 10. Section 372.92, Florida Statutes, is amended to read:

372.92 Rules and regulations; penalties.

(1) The Fish and Wildlife Conservation Commission may prescribe such other rules and regulations as it may deem necessary to prevent the escape of reptiles of concern ~~poisonous and venomous reptiles~~, either in connection of construction of such cages or otherwise to carry out the intent of ss. 372.86-372.91.

(2) A person who knowingly releases any reptile of concern to the wild or who through gross negligence allows a reptile of concern to escape commits a Level Four violation punishable as provided in s. 372.935.

Section 11. Section 372.935 is created to read:

372.935. Captive wildlife penalties.

(1) LEVEL ONE--Unless otherwise provided by law, the following classifications and penalties apply:

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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140 (a) A person commits a Level One violation if she or he
141 violates any of the following provisions:

142 1. Rules or orders of the commission requiring free permits
143 or other authorizations to possess captive wildlife.

144 2. Rules or orders of the Commission relating to the filing
145 of reports or other documents required of persons who are
146 licensed to possess captive wildlife.

147 3. Rules or orders of the commission requiring permits to
148 possess captive wildlife that a fee is charged for, when the
149 person being charged was issued the permit and the permit has
150 expired less than 1 year prior to the violation.

151 (b) Any person cited for committing any offense classified
152 as a Level One violation commits a noncriminal infraction,
153 punishable as provided in this section.

154 (c) Any person cited for committing a noncriminal
155 infraction specified in paragraph (a) shall be cited to appear
156 before the county court. The civil penalty for any noncriminal
157 infraction is \$ 50 if the person cited has not previously been
158 found guilty of any level one violation and \$250 if the person
159 cited has previously been found guilty of any level one
160 violation, except as otherwise provided in this subsection; any
161 person cited for failing to have a required permit or license
162 shall pay an additional civil penalty in the amount of the
163 license fee required.

164 (d) Any person cited for an infraction under this
165 subsection may:

166 1. Post a bond, which shall be equal in amount to the
167 applicable civil penalty; or

168 2. Sign and accept a citation indicating a promise to
169 appear before the county court. The officer may indicate on the

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170 citation the time and location of the scheduled hearing and
171 shall indicate the applicable civil penalty.

172 (e) Any person charged with a noncriminal infraction under
173 this subsection may:

174 1. Pay the civil penalty, either by mail or in person,
175 within 30 days after the date of receiving the citation; or

176 2. If the person has posted bond, forfeit bond by not
177 appearing at the designated time and location.

178 (f) If the person cited follows either of the procedures in
179 sub-paragraphs (e)1. or 2., he or she shall be deemed to have
180 admitted the infraction and to have waived his or her right to a
181 hearing on the issue of commission of the infraction. Such
182 admission shall not be used as evidence in any other proceedings
183 except to determine the appropriate fine for any subsequent
184 violations.

185 (g) Any person who willfully refuses to post a bond or
186 accept and sign a summons is guilty of a misdemeanor of the
187 second degree, punishable as provided in s. 775.082 or s.
188 775.083. Any person who fails to pay the civil penalty specified
189 in this subsection within 30 days after being cited for a
190 noncriminal infraction or to appear before the court pursuant to
191 this subsection is guilty of a misdemeanor of the second degree,
192 punishable as provided in s. 775.082 or s. 775.083.

193 (h) Any person electing to appear before the county court
194 or who is required so to appear shall be deemed to have waived
195 the limitations on the civil penalty specified in paragraph (c).
196 The court, after a hearing, shall make a determination as to
197 whether an infraction has been committed. If the commission of
198 an infraction has been proven, the court may impose a civil

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199 penalty not less than those amounts in paragraph (c) and not to
200 exceed \$ 500.

201 (i) At a hearing under this chapter, the commission of a
202 charged infraction must be proved beyond a reasonable doubt.

203 (j) If a person is found by the hearing official to have
204 committed an infraction, she or he may appeal that finding to
205 the circuit court.

206 (2) LEVEL TWO. - Unless otherwise provided by law, the
207 following classifications and penalties apply:

208 (a) A person commits a Level Two violation if he or she
209 violates any of the following provisions:

210 1. Unless stated in subsection (1), rules or orders of the
211 Commission that require a person to pay a fee to obtain a permit
212 to possess captive wildlife or that require the maintenance of
213 records relating to captive wildlife.

214 2. Rules or orders of the Commission relating to captive
215 wildlife not specified in subsections (1) or (3).

216 3. Rules or orders of the Commission which require housing
217 of wildlife in a safe manner when a violation results in an
218 escape of wildlife other than Class I wildlife.

219 4. Section 372.86, relating to possessing or exhibiting
220 reptiles.

221 5. Section 372.87, relating to licensing of reptiles.

222 6. Section 372.88, relating to bonding requirements for
223 exhibits.

224 7. Section 372.89, relating to housing requirements.

225 8. Section 372.90, relating to transportation.

226 9. Section 372.901, relating to inspection.

227 10. Section 372.91, relating to limitation of access to
228 reptiles.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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229 11. Section 372.921, relating to exhibition or sale of
230 wildlife.

231 12. Section 372.922, relating to personal possession of
232 wildlife.

233 (b) A person who commits any offense classified as a Level
234 Two violation, who has not been convicted of a violation that is
235 classified as Level Two or above within the past three years, is
236 guilty of a misdemeanor of the second degree, punishable as
237 provided in s. 775.082 or s. 775.083.

238 (c) Unless otherwise stated in this paragraph, a person
239 who commits any offense classified as a Level Two violation
240 within a three year period of any previous conviction of any
241 offense classified as level two violation or higher is guilty of
242 a misdemeanor of the first degree, punishable as provided in s.
243 775.082 or s. 775.083 with a minimum mandatory fine of \$250.

244 (d) Unless otherwise stated in this paragraph, a person who
245 commits any offense classified as a level two violation within a
246 five year period of any two previous convictions of offenses
247 that are classified as level two violations or above is guilty
248 of a misdemeanor of the first degree, punishable as provided in
249 s. 775.082 or s. 775.083 with a minimum mandatory fine of \$500
250 and a suspension of all licenses issued under this chapter
251 related to captive wildlife for not less than 1 year.

252 (e) A person who commits any offense classified as a Level
253 Two violation within a ten year period of any three previous
254 convictions of offenses classified as level two violations or
255 above is guilty of a misdemeanor of the first degree, punishable
256 as provided in s. 775.082 or s. 775.083 with a minimum mandatory
257 fine of \$750 and a suspension of all licenses issued under this
258 chapter related to captive wildlife for not less than 3 years.

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259 (3) LEVEL THREE - Unless otherwise provided by law, the
260 following classifications and penalties apply.

261 (a) A person is guilty of Level Three violation if she or
262 he violates any of the following provisions:

263 1. Rules or orders of the Commission which require housing
264 of wildlife in a safe manner when a violation results in an
265 escape of Class I wildlife.

266 2. Rules or orders of the Commission related to captive
267 wildlife when the violation results in serious bodily injury to
268 another person by captive wildlife which consists of a physical
269 condition that creates a substantial risk of death, serious
270 personal disfigurement, or protracted loss or impairment of the
271 function of any bodily member or organ.

272 3. Rules or orders of the Commission relating to the use of
273 gasoline or to other chemical or gaseous substances on wildlife.

274 4. Rules or orders of the Commission prohibiting the
275 release of wildlife for which only conditional possession is
276 allowed.

277 5. Knowingly entering false information on an application
278 for a license or permit to possess wildlife in captivity.

279 6. Section 372.265, relating to illegal importation or
280 introduction of foreign wildlife.

281 (b) 1. A person who commits any offense classified as a
282 Level Three violation, who has not been convicted of a violation
283 that is classified as Level Three or above within the past ten
284 years, is guilty of a misdemeanor of the first degree,
285 punishable as provided in s. 775.082 or s. 775.083.

286 2. A person who commits any offense classified as a Level
287 Three violation within a ten year period of any previous
288 conviction of any offense classified as level three violation or

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289 above is guilty of a misdemeanor of the first degree, punishable
290 as provided in s. 775.082 or s. 775.083 with a minimum mandatory
291 fine of \$750 and a suspension of all licenses issued under this
292 chapter relating to captive wildlife for not less than 3 years.

293 (4) LEVEL FOUR - Unless otherwise provided by law, the
294 following classifications and penalties apply.

295 (a) A person is guilty of Level Four violation if she or he
296 violates any of the following provisions:

297 1. Section 370.081, relating to the possession on
298 nonindigenous marine plants and animals.

299 2. Section 372.92, relating to release of reptiles of
300 concern.

301 3. Rules or orders of the Commission relating to the
302 importation, possession, or release of fish and wildlife for
303 which possession is prohibited.

304 (b) A person who commits any offense classified as a level
305 four violation is guilty of a felony of the third degree,
306 punishable as provided in s. 775.082 or s. 775.083 with a
307 permanent revocation of all licenses or permits to possess
308 captive wildlife issued under this chapter.

309 (5) Unless otherwise provided in this chapter, a person who
310 violates any provision of this section is guilty, for the first
311 offense, of a misdemeanor of the second degree, punishable as
312 provided in s. 775.082 or s. 775.083, and is guilty, for the
313 second offense or any subsequent offense, of a misdemeanor of
314 the first degree, punishable as provided in s. 775.082 or s.
315 775.083.

316 (6) The court may order the suspension or revocation of any
317 license or permit issued to a person pursuant to this chapter,

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318 if that person commits a criminal offense specified in this
319 section or a noncriminal infraction specified in this section.

320 (7) For any purpose of this section, conviction means any
321 judicial disposition other than acquittal or dismissal.

322 (8) Nothing herein shall limit the commission from
323 suspending or revoking any license to possess wildlife in
324 captivity by administrative action in accordance with Chapter
325 120, Florida Statutes. For purposes of administrative action, a
326 conviction of a criminal offense shall mean any judicial
327 disposition other than acquittal or dismissal.

328 Section 12. Beginning in the 2006-2007 fiscal year, the
329 sum of \$300,000 is appropriated from the State Game Trust Fund
330 to the Fish and Wildlife Conservation Commission on a recurring
331 basis to implement the provisions of this act.

332 Section 13. This act shall take effect on October 1, 2006.

333
334 ===== T I T L E A M E N D M E N T =====

335 Remove the entire title and insert:

336
337 An act relating to venomous, nonnative, or other
338 reptiles; amending s. 372.86; providing for the
339 regulation of said reptiles; amending s. 372.87;
340 providing for licensure; amending s. 372.88; providing
341 for bonds; amending s. 372.89; requiring proper
342 housing of reptiles of concern; amending s. 372.90;
343 regulating transportation of reptiles of concern that
344 are venomous; amending s. 372.901; providing for
345 inspection and reporting; amending s. 372.91;
346 regulating opening of cages; renumbering s. 372.911;
347 repealing s. 372.912; amending s. 372.92; creating s.

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348 372.935; providing penalties relating to captive
349 wildlife; providing an appropriation; providing an
350 effective date.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 229 CS Use of Land for the Exploration, Production, and Storage of
Petroleum and Natural Gas
SPONSOR(S): Clarke
TIED BILLS: **IDEN./SIM. BILLS:** SB 2708

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee	11 Y, 0 N, w/CS	Lotspeich	Lotspeich
2) Environmental Regulation Committee	7 Y, 0 N	Perkins	Kliner
3) Agriculture & Environment Appropriations Committee		Dixon <i>LD</i>	Dixon <i>LD</i>
4) State Resources Council			
5)			

SUMMARY ANALYSIS

The bill directs the Department of Environmental Protection (DEP) to contract for a study relating to risk and potential adverse effects of hurricane wind and storm surge on field-erected aboveground storage tank systems at bulk product facilities.

The bill also directs the DEP to review and compile existing data and information to evaluate the environmental risks from all activities associated with the possible future exploration for and production of oil and natural gas in the eastern Gulf of Mexico currently subject to federal moratoria.

The DEP is authorized to use up to \$250,000 from the Inland Protection Trust Fund for the 2006-2007 and 2007-2008 fiscal years to pay the expenses of the study relating to aboveground storage tanks.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Offshore Drilling for Oil and Natural Gas

The Outer Continental Shelf

The Outer Continental Shelf (OCS) consists of the submerged lands, subsoil, and seabed, lying between the seaward extent of the States' jurisdiction and the seaward extent of Federal jurisdiction. The continental shelf is the gently sloping undersea plain between a continent and the deep ocean. The United States OCS has been divided into four leasing regions. They are the Gulf of Mexico OCS Region, the Atlantic OCS Region, the Pacific OCS Region, and the Alaska OCS Region. In 1953, Congress designated the Secretary of the Department of Interior to administer mineral exploration and development of the entire OCS through the Outer Continental Shelf Lands Act (OCSLA). The OCSLA was amended in 1978 directing the secretary to:¹

- conserve the Nation's natural resources;
- develop natural gas and oil reserves in an orderly and timely manner;
- meet the energy needs of the country;
- protect the human, marine, and coastal environments; and
- receive a fair and equitable return on the resources of the OCS.

State jurisdiction over the OCS is defined as follows:

- Texas and the Gulf coast of Florida are extended 3 marine leagues (approximately 9 nautical miles) seaward from the shoreline.
- Louisiana is extended 3 imperial nautical miles (imperial nautical mile = 6080.2 feet) seaward from the shoreline.
- All other States' seaward limits are extended 3 nautical miles (approximately 3.3 statute miles) seaward from the shoreline.

Federal jurisdiction over the OCS is defined under accepted principles of international law. The seaward limit is defined as the farthest of 200 nautical miles seaward of the shoreline or, if the continental shelf can be shown to exceed 200 nautical miles, a distance not greater than a line 100 nautical miles from the 2,500-meter isobath or a line 350 nautical miles from the shoreline.²

The OCS is a significant source of oil and gas for the nation's energy supply. The OCS supplies more than 25 percent of the country's natural gas production and more than 30 percent of total domestic oil production. The offshore areas of the United States contain the majority of future oil and gas

¹ <http://www.gomr.mms.gov/homepg/whoismms/whatsocs.html>

² <http://www.gomr.mms.gov/homepg/whoismms/whatsocs.html>

resources. It is estimated that 60 percent of the oil and 59 percent of the gas yet to be discovered in the United States are located on the OCS.³

The OCS Lands Act requires the Department of Interior (DOI) to prepare a 5-year program that specifies the size, timing and location of areas to be assessed for Federal offshore natural gas and oil leasing. It is the role of DOI to ensure that the U.S. government receives fair market value for acreage made available for leasing and that any oil and gas activities conserve resources, operate safely, and take maximum steps to protect the environment. OCS oil and gas lease sales are held on an area-wide basis with annual sales in the Central and Western Gulf of Mexico with less frequent sales held in the Eastern Gulf of Mexico and offshore Alaska. The program operates along all the coasts of the United States - with oil and gas production occurring on the Gulf of Mexico, Pacific, and Alaska and OCS.⁴

The Minerals Management Service

The Minerals Management Service (MMS), a bureau in the DOI, is the federal agency that manages the nation's natural gas, oil and other mineral resources on the OCS. The MMS also collects, accounts for and disburses more than \$8 billion per year in revenues from federal offshore mineral leases. The MMS oversees two major programs: Offshore Minerals and Minerals Revenue Management. The Offshore Minerals program, which manages the mineral resources on the OCS, comprises three regions: Alaska, the Pacific, and the Gulf of Mexico.⁵

The Gulf of Mexico OCS Region is made up of three planning areas along the Gulf Coast - the Western, Central, and Eastern Gulf of Mexico Planning Areas. These areas contain 43 million acres under lease. There are 3,911 offshore production platforms active in the search for natural gas and oil on the Gulf OCS. These production facilities contribute significantly to the nation's energy supply.⁶

Eastern Gulf of Mexico Planning Area⁷

The Eastern Gulf of Mexico Planning Area extends along the Gulf's northeastern coast for some 700 miles, from Baldwin County, Alabama, southward to the Florida Keys. The area encompasses approximately 76 million acres, with water depths ranging from approximately 30 feet to nearly 10,000 feet. The area extends for more than 300 miles seaward of the state/federal boundary (9 miles off the Florida coast).

Since the late 1980's, a limited amount of OCS activity has taken place in the Eastern Gulf of Mexico Planning Area because of administrative deferrals and annual congressional moratoria.

The MMS has estimated that between 6.95 and 9.22 trillion cubic feet of natural gas and 1.57 and 2.78 billion barrels of oil and condensate are contained in the Eastern Gulf of Mexico Planning Area. Drilling for natural gas and oil has been occurring in the Eastern Gulf of Mexico offshore Alabama and Florida for more than three decades. The first of 11 natural gas and oil lease sales held offshore Florida occurred in 1959 and resulted in the issuance of 23 leases. Additional lease sales have been held periodically in the Eastern Gulf from 1973 through 2003. Currently, there are 241 active leases in the Eastern Gulf of Mexico Planning Area.

Exploratory drilling started in the Eastern Gulf of Mexico in the mid-1970's with the drilling of Destin Dome Block 162, located 40 miles south of Panama City, Florida. After two years of drilling and 15 dry holes, exploration stopped. To date, over 54 exploratory wells have been drilled in the Eastern Gulf of Mexico. Thirteen wells discovered natural gas, condensate, and crude oil.

³ <http://www.mms.gov/offshore/>

⁴ <http://www.mms.gov/offshore/>

⁵ <http://www.mms.gov/aboutmms/>

⁶ <http://www.gomr.mms.gov/homepg/offshore/gulfocs/gulfocs.html>

⁷ <http://www.gomr.mms.gov/homepg/offshore/egom/eastern.html>

Three Eastern Gulf lease sales were made in the 1980's and there was renewed industry interest in the Destin Dome area. In the late 1980's, Chevron U.S.A. and Gulfstar made natural gas discoveries in the area.

In October 1995, 73 oil and gas leases located *south* of 26° N. latitude (the approximate latitude of Naples, Florida) were returned to the federal government as part of a litigation settlement. Consequently, no active Federal natural gas and oil leases exist off southwest Florida. Likewise, no active leases exist in the Straits of Florida Planning Area or off Florida's east coast (South Atlantic Planning Area).

In 1996, a development plan was filed by Chevron U.S.A. and partners on the Destin Dome 56 Unit. On July 24, 2000, Chevron U.S.A. and partners filed a lawsuit against the U.S. government for denying the companies "timely and fair review" of plans and permits relating to the Destin Dome 56 Unit. In May 2002, the Department agreed to settle the litigation with the oil companies. The companies -- Chevron, Conoco and Murphy Oil -- relinquished seven of nine leases in the unit that were the subject of the litigation in exchange for \$115 million. The remaining two leases, Destin Dome Blocks 56 and 57, are to be held by Murphy and will be suspended until at least 2012, under the terms of the agreement. Murphy agreed not to submit a development plan on the two remaining leases before 2012, the year when the current moratoria will expire. Under the terms of the agreement, the leases can not be developed unless approved by both the federal government and the State of Florida.

Unocal began the first production in the Eastern Gulf Planning Area in mid-February 1999 on Pensacola Block 881. Located approximately 12 miles offshore Alabama, this site involves the production of some 5 million cubic feet of natural gas per day.

In October 1999, Gulfstream Natural Gas Systems (ANR) and Buccaneer Gas Pipeline Company (Transco/Williams) submitted pipeline right-of-way applications to the MMS for the construction of two 400-mile (36-inch) natural gas pipelines spanning the Eastern Gulf of Mexico. The Gulfstream right-of-way was approved by MMS on June 1, 2001. This line went into service in June 2002.

In November 1996, DOI released the OCS Oil and Gas Leasing Program (1997-2002). The program included 16 lease sales, with one sale proposed for the Eastern Gulf of Mexico in 2001. The original sale area was reviewed to be consistent with the State of Florida's opposition to offshore oil and gas activities within 100 miles of its coast. The first steps in the 3-year planning process began on January 25, 1999, with the release of the Call for Interest and Information and the Notice of Intent to Prepare an Environmental Impact Statement. A draft environmental impact statement was released in December 2000 and a final EIS was made available to the public in July 2001.

In July 2001, Sale 181 was adjusted from 5.9 million acres to about 1.5 million acres or 256 blocks. The adjusted area lies more than 100 miles off the Alabama/Florida State line. Twenty-three blocks in this area were under lease at that time. Lease Sale 181 was held on December 5, 2001. MMS awarded leases on 95 tracts involving \$340,474,113. Seventeen companies participated in this sale.

On December 10, 2003, Eastern Gulf of Mexico Sale 189 was held. Six companies participated in the lease sale that offered 138 blocks comprising approximately 794,880 acres offshore Alabama. The highest bid received was \$2.2 million, submitted by Shell and Nexen.

In an August 22, 2005, DOI news release, it was announced that the MMS is seeking initial public comment on the development of its 2007-2012 five-year leasing plan for energy development on the OCS and accompanying environmental impact statement.⁸ This includes the Eastern Gulf of Mexico Planning Area. The announcement stated:

⁸ http://www.doi.gov/news/05_News_Releases/050822.htm
STORAGE NAME: h0229d.AGEA.doc
DATE: 3/30/2006

"The announcement is the first step in a two-year process to develop the leasing plan. It does not include proposals for new lease sales but instead asks the public for general information and comment not only on energy development but also on other economic and environmental issues in the OCS areas.

'The OCS contains billions of barrels of oil and trillions of cubic feet of natural gas that can be safely produced,' Interior Secretary Gale Norton said. 'With our reliance on imports of foreign oil climbing each year, we would be irresponsible if we did not consider how we might develop these abundant domestic resources.'

Presidential withdrawals or congressional moratoria have placed more than 85 percent of the OCS off the lower 48 states off limits to energy development.

The Bush Administration has repeatedly expressed its support for the existing moratoria, based upon deference to the wishes of the states to determine what activities take place off their coasts.

However, recent energy legislation passed by Congress calls for a comprehensive inventory and analysis of the oil and natural gas resources for all areas of the OCS.

Therefore, as MMS undertakes the process of drafting its proposal, the agency is seeking comment on the potential resources available in all areas of the OCS, recognizing that many of these areas are subject to existing moratoria and will not be fully analyzed for possible leasing. In seeking public comment, Secretary Norton reaffirmed the Bush Administration's pledge not to conduct any new leasing under the 2007-2012 five-year plan within 100 miles of Florida's coast, in the Eastern Gulf of Mexico Planning Area. MMS is also asking the public to comment specifically on whether the existing withdrawals or moratoria should be modified or expanded to include other areas in the OCS; and whether the Interior Department should work with Congress to develop gas-only leases.

The 2007-2012 OCS oil and gas leasing program will be the seventh program prepared since Congress passed the OCS Lands Act in 1978. The Act requires the Secretary of the Interior to prepare and maintain five-year programs for offshore oil and natural gas leasing. The current program runs through June 30, 2007.

Once public comment is received, MMS will develop a draft proposed program followed by a proposed program and draft EIS. The public will have an opportunity to comment on both documents.

The following is the schedule for the 2007-2012 five-year program:"

Date	Step
August 24, 2005	Solicit comments and information (Federal Register Notice)
Winter 2005	Issue draft proposed program (60-day comment period)
Summer 2006	Issue proposed program and draft EIS (90-day comment period)
Winter 2007	Issue proposed final program and final EIS (60-day waiting period)
Spring 2007	Approve five-year program for July 2007-July 2012

The Exploration and Development Process

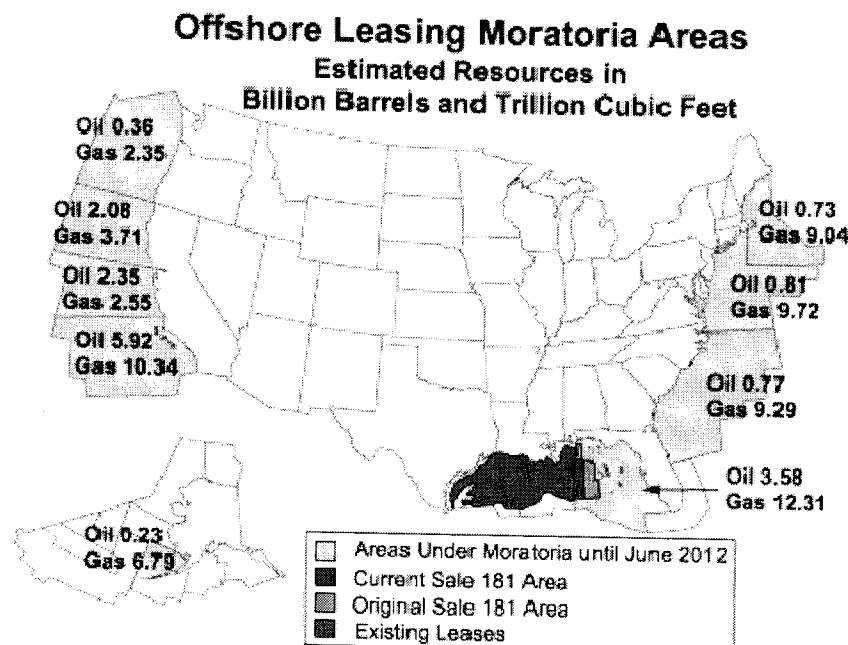
Once a company acquires a lease, the company has to prepare an exploration plan and have it approved by MMS and other federal and state agencies in order to drill a well. Typical exploration plans propose the drilling of one or more exploratory wells. The MMS conducts an environmental review of the impacts of drilling the well. Should a discovery be made, the company may then prepare and file a development plan. The exploration and development plans must be consistent with the affected state's Coastal Zone Management Plan

During exploratory drilling or production operations on the OCS, the MMS inspection program calls for MMS inspectors to review operations and periodically visit and inspect facilities to ensure clean and environmentally safe operations.

To prepare for lease sales and to protect the environment during offshore drilling operations, MMS conducts environmental studies. Several new studies are planned and/or currently underway.⁹

Federal Moratoria

Congress and past Presidents have placed moratoria on offshore drilling and development on the OCS on both the U.S. East and West Coasts. Included in the moratoria is the Eastern Gulf of Mexico. The consequence of the moratoria is to foreclose until at least 2012 any effort to explore for critical oil and gas resources that are estimated to lie beneath these areas. In response to recent sharp increases in fuel and home heating oil, several attempts have been made in Congress to limit or remove these moratoria. The map below illustrates these moratoria areas.¹⁰



Note: Locations of existing leases offshore California and in Eastern Gulf of Mexico are approximate and intended to be representative only.

Source: Minerals Management Service

⁹ <http://www.gomr.mms.gov/homepg/offshore/egom/eastern.html>

¹⁰ <http://api-ep.api.org/issues/index.cfm>

Current State Law

Under the provisions of Chapter 253, F.S., the Governor and Cabinet sitting as the Trustees of the Internal Improvement Trust Fund have been granted the powers and duties with regard to the control of private uses of state-owned submerged lands. These state-owned submerged lands extend waterward from the shoreline for approximately 9 miles into the Gulf of Mexico and 3 miles into Atlantic Ocean.¹¹ Section 253.61, F.S., expressly prohibits the Trustees from granting any "oil or natural gas lease" on state-owned submerged lands off the State's west coast. A similar provision in section 377.24, F.S., prohibits the DEP from issuing a *permit* "to drill a well in search of oil or gas" on the same state-owned submerged lands.

Onshore Storage of Petroleum Products

There are currently 11 ports along Florida's coast where petroleum products are shipped into the State. Each of these ports has one or more bulk petroleum storage facilities. The largest such facilities are located at Tampa (11 facilities with 162 million gallons of unleaded gasoline and 65 million gallons of diesel), Port Everglades (13 facilities with 147 million gallons of unleaded gasoline and 51.5 million gallons of diesel), Jacksonville (9 facilities with 95.5 million gallons of unleaded gasoline and 53 million gallons of diesel), Pensacola (2 facilities with 13 million gallons of unleaded gasoline and 3 million gallons of diesel), and Cape Canaveral (1 facility with 12.5 million gallons of unleaded gasoline and 5 million gallons of diesel).

Hurricane Katrina caused significant damage to bulk petroleum storage facilities along the Louisiana coast. According to the U.S. Coast Guard, Hurricane Katrina caused 6 major spills (> 100,000 gallons) at such facilities, 4 medium spills (>10,000 gallons), and 134 minor spills (< 10,000 gallons) in Louisiana. The total volume from all spills was approximately 8 million gallons. As of November 5, 2005, 3.5 million gallons had been recovered, 2 million gallons evaporated, and 2 million gallons naturally dispersed, leaving approximately 400,000 gallons to be addressed.¹²

EFFECT OF PROPOSED CHANGES

Aboveground Storage Tanks Study

The bill requires the DEP to contract for a study that evaluates the exposure risk and potential adverse effects of hurricane wind and storm surge on field-erected aboveground storage tank systems (tanks, piping, pumps, and related components) at bulk product facilities, as defined in subsection 376.031(3), F.S.

The scope of the study, at a minimum, must include:

- An evaluation of the frequency, strength, and probability estimates for hurricane winds and storm surge on those areas of Florida coasts where existing bulk product facilities are located and where new bulk product facilities are likely to be constructed.
- An evaluation of the need and timing for requirements for the establishment of minimum ballast levels for field-erected aboveground storage tanks at bulk product facilities.
- An evaluation of the need and feasibility for requirements for temporary and permanent anchoring systems.

¹¹ Section 1, Article II, Florida Constitution

¹² <http://www.uscgstormwatch.com/go/doc/1008/87976/>

- An evaluation of the need for potential siting considerations or engineering mitigation that would prevent or limit the installation of new field-erected aboveground storage tank systems at bulk product facilities in areas that are potentially high risk areas for hurricane winds and storm surge.
- Identification of all current and proposed industry standards for professionally engineered dike-fields surrounding field-erected aboveground storage tanks at bulk product facilities.

The study is to include recommendations for changes, if needed, to aboveground storage tank system laws and agency rules in order to decrease damage from hurricanes and improve recovery of field-erected aboveground storage tank systems after storm damage. All recommendations must be accompanied by a cost-benefit analysis which is to include an analysis of:

- The costs for modifying existing field-erected aboveground storage tank systems and dike fields, and the costs associated with new construction of field-erected aboveground storage tank systems and dike fields, to meet any proposed new requirements; and
- The potential adverse effect on petroleum inventory capacity in Florida resulting from any proposed new requirements. All industry segments with field-erected aboveground storage tanks shall be included in the petroleum inventory capacity analysis (e.g. petroleum, electric utility, etc.).

The department is required to report the findings and recommendations of the study to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2008.

The DEP is authorized to use up to \$250,000 from the Inland Protection Trust Fund for the 2006-2007 and 2007-2008 fiscal years to pay the expenses of the study.

Environmental Impacts from Oil and Natural Gas Drilling in the Eastern Gulf of Mexico

The bill also requires the DEP to review and compile existing data and information to evaluate the environmental risks from all activities associated with the possible future exploration for and production of oil and natural gas in the eastern Gulf of Mexico currently subject to federal moratoria.

The bill requires the DEP to immediately request from the appropriate state agencies and private research institutes all available data and information needed by DEP to complete the evaluation. The appropriate state agencies must submit the data and information to the department at the earliest possible date. Private research institutes that may have such data and information are encouraged to submit relevant data and information to DEP to the maximum extent practicable. The DEP's effort are also to include data and information available through appropriate federal executive branch agencies.

The DEP's evaluation must take into consideration current technologies for controlling discharges from oil and gas exploration rigs and production platforms, and must include, but need not be limited to:

- Evaluating the probability of a discharge from oil and gas exploration rigs and production platforms.
- Evaluating the magnitude of any probable discharge from oil and gas exploration rigs and production platforms.
- Evaluating Gulf of Mexico currents and circulation patterns and the likelihood of any probable discharge reaching Florida's coastal waters and shorelines.
- Evaluating the environmental impacts of any probable discharge on the fish and wildlife resources in Florida's coastal waters.

The DEP is required to present to the Governor, the President of the Senate, and the Speaker of the House of Representatives the results of its evaluation within 120 days after the effective date of the act.

C. SECTION DIRECTORY:

- Section 1. Directs the DEP to contract for a study relating to risk and potential adverse effects of hurricane wind and storm surge on field-erected aboveground storage tank systems at bulk product facilities.
- Section 2. Provides an appropriation for the study required by Section 1.
- Section 3. Directs the DEP to review and compile existing data and information to evaluate the environmental risks from all activities associated with the possible future exploration for and production of oil and natural gas in the eastern Gulf of Mexico currently subject to federal moratoria.
- Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

The DEP is authorized to use up to \$250,000 from the Inland Protection Trust Fund for the 2006-2007 and 2007-2008 fiscal years to pay the expenses of the study relating to aboveground storage tanks as provided for in Section 1 of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable, because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to

raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill does not require the promulgation of rules by nor alter the rulemaking authority of any state agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Water and Natural Resources Committee adopted a strike-all amendment to HB 229. The strike-all amendment makes the following changes to the bill:

- Directs the DEP to contract for a study that evaluates the exposure risk and potential adverse effects of hurricane wind and storm surge on field-erected aboveground storage tanks at bulk product facilities.
- Provides that the DEP is authorized to use up to \$250,000 from the Inland Protection Trust Fund for the 2006-2007 and 2007-2008 fiscal years to pay the expenses of the study relating to aboveground storage tanks .
- Directs the DEP to review and compile existing data and information to evaluate the environmental risks from all activities associated with the possible future exploration for and production of oil and natural gas in the eastern Gulf of Mexico currently subject to federal moratoria.

This analysis has been revised to reflect the strike-all amendment.

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CHAMBER ACTION

The Water & Natural Resources Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the exploration, production, and storage of petroleum and natural gas; directing the Department of Environmental Protection to contract for a study of exposure risks and potential adverse effects of hurricane wind and storm surge on field-erected aboveground storage tank systems at bulk product facilities; providing requirements for the scope of the study; providing an appropriation from the Inland Protection Trust Fund for the cost of the study; directing the department to compile and review existing data and information relating to environmental risks associated with oil and natural gas exploration and production in the eastern Gulf of Mexico; providing requirements and criteria for the evaluation of such risks; requiring the department to submit a report to the Governor and the Legislature; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Study of exposure risks and potential adverse effects of hurricane wind and storm surge on field-erected aboveground storage tank systems at bulk product facilities.--

(1) The Department of Environmental Protection shall contract for a study to evaluate the exposure risks and potential adverse effects of hurricane wind and storm surge on field-erected aboveground storage tank systems, including tanks, piping, pumps, and related components, at bulk product facilities as defined in s. 376.031(3), Florida Statutes. The study's scope shall include, but need not be limited to:

(a) Evaluating the frequency, strength, and probability estimates for hurricane winds and storm surge on the coastal areas of the state where existing bulk product facilities are located and where new bulk product facilities are likely to be constructed.

(b) Evaluating the need and timing for requirements for the establishment of minimum ballast levels for field-erected aboveground storage tanks at bulk product facilities based on the frequency, strength, and probability estimates for hurricane winds and storm surge, and based on levels calculated by a professional engineer specific to each individual field-erected aboveground storage tank, taking into account the type of tank, the type of product stored, tank diameter, tank height, and other relevant factors.

(c) Evaluating the need and feasibility for requirements for:

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52 1. Professionally engineered permanent anchoring systems
53 for field-erected aboveground storage tanks in high-risk surge
54 zones.

55 2. Professionally engineered temporary cable tie-down
56 systems, which could be preconstructed or prefabricated and
57 retained in storage until needed, that would not interfere with
58 normal daily operations and that could be set up in advance of
59 an approaching storm.

60 (d) Evaluating the need for potential siting
61 considerations or engineering mitigation that would prevent or
62 limit the installation of new field-erected aboveground storage
63 tank systems at bulk product facilities in areas that are
64 potentially high-risk areas for hurricane winds and storm surge
65 unless the systems are designed and engineered to withstand
66 hurricane winds and storm surge.

67 (e) Identifying all current and proposed industry
68 standards for professionally engineered dike fields surrounding
69 field-erected aboveground storage tanks at bulk product
70 facilities, including standards for materials and designs that
71 will withstand hurricane winds and storm surges yet allow access
72 for emergency firefighting vehicles in accordance with industry
73 reference standards contained in National Fire Protection
74 Association publication NFPA No. 30.

75 (2) The study shall include recommendations for changes,
76 if needed, to aboveground storage tank system laws and agency
77 rules in order to decrease damage from hurricanes and improve
78 recovery of field-erected aboveground storage tank systems after

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79 storm damage. All recommendations shall be accompanied by a
80 cost-benefit analysis, which shall include an analysis of:

81 (a) The costs for modifying existing field-erected
82 aboveground storage tank systems and dike fields, and the costs
83 associated with new construction of field-erected aboveground
84 storage tank systems and dike fields, to meet any proposed new
85 requirements.

86 (b) The potential adverse effect on petroleum inventory
87 capacity in the state resulting from any proposed new
88 requirements. All industry segments with field-erected
89 aboveground storage tanks, including, but not limited to, those
90 used for petroleum and electric utility, shall be included in
91 the petroleum inventory capacity analysis.

92 (3) The department shall report the findings and
93 recommendations of the study to the Governor, the President of
94 the Senate, and the Speaker of the House of Representatives by
95 March 1, 2008.

96 (4) The Department of Environmental Protection is
97 authorized to use up to \$250,000 from the Inland Protection
98 Trust Fund for the 2006-2007 and 2007-2008 fiscal years for the
99 cost of the study set forth in this section.

100 Section 2. Compilation and review of existing data and
101 information relating to environmental risks associated with oil
102 and natural gas exploration and production in the eastern Gulf
103 of Mexico.--

104 (1) The Department of Environmental Protection shall
105 compile and review existing data and information to evaluate the
106 environmental risks from all activities associated with the

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possible future exploration for and production of oil and natural gas in the eastern Gulf of Mexico currently subject to federal moratoria. The department shall immediately request from the appropriate state agencies and private research institutes all available data and information necessary to complete this task. The appropriate state agencies must submit the data and information to the department at the earliest possible date, and private research institutes are encouraged to submit relevant data and information to the maximum extent practicable. The department's effort shall include data and information available through appropriate federal executive branch agencies. To the maximum extent practicable, the department's efforts shall take into consideration current technologies for controlling discharges from oil and gas exploration rigs and production platforms and shall include, but need not be limited to:

(a) Evaluating the probability of a discharge from oil and gas exploration rigs and production platforms.

(b) Evaluating the magnitude of any probable discharge from oil and gas exploration rigs and production platforms.

(c) Evaluating the Gulf of Mexico currents and circulation patterns and the likelihood of any probable discharge's reaching the coastal waters and shorelines of the state.

(d) Evaluating the environmental impacts of any probable discharge on the fish and wildlife resources in the coastal waters of the state.

(2) The department shall report the findings of the evaluation to the Governor, the President of the Senate, and the

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134 | Speaker of the House of Representatives within 120 days after
135 | the effective date of this act.

136 | Section 3. This act shall take effect upon becoming a law.